EXHIBIT C-2

```
 1   AMERICAN ARBITRATION ASSOCIATION

     ---------------------------------------------X

 2   In the Matter of the Arbitration of

 3   J&J EMPIRE EXPRESS, INC., d/b/a JEE,

 4                          CLAIMANT,

 5        -and-            AAA No.:

 6

     FEDEX GROUND PACKAGE SYSTEM, INC.,

 7   i/p/a FED EX GROUND PACKAGE SYSTEM, INC.,

 8                          RESPONDENT.

     ---------------------------------------------X

 9

10

11              DATE: July 25th, 2023

12              TIME: 9:30 A.M.

13

14

15          DAY 2 of ARBITRATION in the

16   above entitled matter, held at the offices

17   of O'Melveny Law Firm, Times Square Tower,

18   7 Times Square, New York, New York 10036,

19   stenographically transcribed by Marina, a

20   Notary Public of the State of New York,

21   held before MARGARITA ECHEVARRIA,

22   Arbitrator.

23

24

25    Job No. CS6024001
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1 A P P E A R A N C E S :
2
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    ARBITRATOR
4   Margarita@echevarriaadr.com
5
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8   (212) 542-8882
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    Attorneys for the Respondent
12 FEDEX GROUND PACKAGE SYSTEM, INC.,
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13 40 Exchange Place, 18th Floor,
    New York, New York 10005
14 BY: CHRISTOPHER DEL BOVE, ESQ.
    Cdelbove@callahanfusco.com
15 MITCHELL AYES, ESQ.
    Mayes@callahanfusco.com
16
17 ALSO PRESENT:
18 ANNE LEWIS, ESQ, In house counsel for FedEx
    Ground
19
    MICHAEL SCHERER, FedEx Ground rep
20
21
22
        *   *   *
23
24
25

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1 I N D E X   O F   P R O C E E D I N G S
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Page 311

1   Krystle Ruggiero
2   ARBITRATOR: We're on the
3 second day of JEE -- J & J, I'm
4 sorry, Empire Express versus FedEx
5 Ground Package System. American
6 Arbitration Association Case Number
7 01-22-0004-2920.
8   Admonition to all, please turn
9 off the phones or lower your ringers
10 so we don't have unnecessary
11 interruptions. You'll be sworn to
12 testify and understand that you stay
13 sworn until your testimony is over.
14 Okay?
15   THE WITNESS: Uh-huh.
16   ARBITRATOR: Please raise your
17 right hand.
18   Promise to tell the truth, the
19 whole truth and nothing but the
20 truth?
21   THE WITNESS: Yes.
22   ARBITRATOR: Thank you.
23   Okay, Mr. Roth.
24
25

2 (Pages 308 - 311)

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1   Krystle Ruggiero
2 K R Y S T L E R U G G I E R O,
3   called as a witness, having been
4   first duly sworn by a Notary Public
5   of the State of New York, was
6   examined and testified as follows:
7 DIRECT EXAMINATION
8 BY MR. ROTH:
9   Q.   Can you give me your
10 educational background, please.
11   A.   Sure. I have a Bachelor's
12 Degree from Manhattan College in
13 psychology, and I continued with a Master's
14 Degree at Mammoth University in psychology
15 and double Master's in education and
16 business.
17   Q.   What years were the
18 undergraduate?
19   A.   I graduated in 2001. Four-year
20 school, I graduated in 2005. Then I
21 started actually looking for work. I
22 started working at Manhattan College and
23 then partially starting my Master's Degree.
24   Q.   When did you get your Master's
25 Degree?

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1   Krystle Ruggiero
2   A.   I didn't complete my Master's
3 at Manhattan College. I continued to go to
4 Mammoth University, and that's in New
5 Jersey.
6   Q.   What year did you get your
7 first Master's?
8   A.   So, I started in 2012. It was
9 around 2017, and then I continued to get my
10 second Master's and my LAC in 2020.
11   Q.   Okay. Why don't you tell us
12 briefly your employment history.
13   A.   So I started working actually
14 within the school as a work student. I'll
15 tell myself, go through your Bachelor's.
16   I continued there to work in
17 the admissions office and to start my
18 initial Master's, which -- when you work
19 there, you get free Master's. So, that was
20 my way of doing that, paying for that.
21   And so I took time off. I was
22 here and there because of finances. So in
23 that time I worked as a nanny. I did all
24 the odds and ends jobs that I could. My
25 father owns Best Refrigeration and Air

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1   Krystle Ruggiero
2 Conditioning, so I helped out with that as
3 far as bookkeeping and managing of parts.
4   So in between that, and then I
5 started to go back for a Master's at
6 Mammoth University, and I continued that in
7 2012 and also working in the admissions
8 office at Mammoth University to uphold my
9 Master's. And then I continued and
10 completed my second Master's in 2020, and
11 that was along with an LAC, which is a
12 Licensed Associate Therapy certificate and
13 the completion in 2020.
14   Q.   Did you ever -- did you also
15 begin to work at J & J?
16   A.   So I started working in J & J
17 around 2019, I believe, just here and there
18 because it's my brother's business, so I
19 was helping where need be.
20   Q.   Tell us what type of stuff did
21 you do at J & J.
22   A.   I was only there about two
23 times a week, but I would do things as far
24 as order uniforms, managing a schedule,
25 helping out with payroll, which is ADP,

Page 315

1   Krystle Ruggiero
2 which is where I calculated hours and then
3 handed that over to my brother to do the
4 rest of payroll.
5   Q.   Hiring?
6   A.   I did hiring with First
7 Advantage. That's hiring and firing as far
8 as you do their resume, their background
9 check, and then followed with a drug
10 assessment in order to hire them. That's
11 where I fitted them with uniforms, I also
12 do that. And like I said, the scheduling.
13   I also dealt with packages,
14 disputing of packages. If something was
15 either mishandled or not delivered on time,
16 I handled that and put that to the -- not
17 only the BCs, but the managers to finish
18 with. And yeah, that's about that.
19   Q.   Were you ever yourself
20 interested in buying a FedEx route?
21   A.   I was. In the beginning of my
22 brother buying a route, my Uncle Gene
23 actually gave the idea to my father. My
24 father presented it to my brother, and I
25 wanted to have my own separate route. My

3 (Pages 312 - 315)

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1   Krystle Ruggiero
2 brother was -- you know, I was dealing with
3 finishing my Master's. So, my brother was
4 the first in line as far as getting the
5 business started.
6   So, he was the first to do
7 that, but we were looking -- my father was
8 looking and had me look personally for
9 myself for my own route.
10   Q.   And what -- so tell me what you
11 did to look for your own route.
12   A.   Well, I searched online. I
13 know my father was talking to other
14 contractors that were hoping to sell to try
15 to help me out, giving some insight. And
16 yeah, a lot of Google.
17   Q.   Did there come a time when you
18 learned your brother was going to sell his
19 business?
20   A.   I did learn that he was going
21 to sell his business and actually came at a
22 time where I still had been searching, but
23 hadn't found the right fit. And so it
24 became perfect that he was looking to move
25 on and going to whatever other company and

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1   Krystle Ruggiero
2 I could fill those shoes.
3   Q.   Did you talk to your brother
4 then about maybe purchasing his business?
5   A.   I did speak with him about
6 that.
7   Q.   Did you discuss the price?
8   A.   We spoke about 1.88 million.
9 He sent me a valuation of the company.
10   Q.   And did you -- how were you
11 going to -- did you figure out how you were
12 going to pay for it?
13   A.   I do have money saved and then
14 we were going to -- either we were going to
15 figure out some type of financial plan.
16   Q.   With your brother?
17   A.   With my brother, yeah.
18   Q.   And after you had the
19 discussions with your brother -- did there
20 come a time you spoke to Mike Scherer?
21   A.   There was a time I spoke with
22 Mike Scherer.
23   Q.   Tell us about the first time
24 you spoke with him.
25   A.   So, I spoke with Mike Scherer

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1   Krystle Ruggiero
2 over the phone, just kind of putting it out
3 there about me wanting to have my own
4 route. My brother was a contractor that
5 was selling. Like I said, I was looking
6 for other contractors to sell but the price
7 wasn't right. This happened to fall into
8 place.
9   So, I spoke with Mike Scherer
10 about that. He said to come in in person,
11 which I did with an RFI.
12   Q.   So let me show you -- I am
13 going to hand you this book.
14   A.   Sure.
15   Q.   Let me show you a document
16 which -- Tab 21.
17   A.   Thank you.
18   Q.   And what is Tab 21?
19   A.   So, it starts by my business
20 experience in the RFI.
21   Q.   This is your RFI you gave to
22 Mike Scherer?
23   A.   Correct.
24   Q.   What's Krystle Clear?
25   A.   That's the name I was going to

Page 319

1   Krystle Ruggiero
2 name my business.
3   Q.   Had you formed it yet?
4   A.   I hadn't created an LLC or INC
5 yet. Not yet.
6   Q.   Were your intentions to, once
7 you got approval, to form the business and
8 to get it up and running?
9   A.   Yes.
10   Q.   And I think you said you talked
11 to Mike Scherer, and he said come in.
12   Did you go and meet Mike
13 Scherer?
14   A.   I met with him in person with
15 my brother.
16   Q.   The three of you.
17   Do you know approximately when
18 that was?
19   A.   That was sometime in April.
20   Q.   Of 2022?
21   A.   Correct.
22   Q.   And tell us about the meeting
23 you had with Mike Scherer. Who said what
24 to whom?
25   A.   We just spoke about me being a

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1   Krystle Ruggiero
2   prospective buyer. He looked over my hire
3   and fire. He said everything looks good.
4   That we were going to be proceeding
5   forward. At the end of the meeting, it
6   seemed like everything was working out
7   quite fine. He was happy to see my RFI.
8   He said he would follow back with the next
9   steps.
10   Q.   And what happened? What were
11   the next steps, if any? Withdrawn.
12   What happened next?
13   A.   So he never told me what were
14   the proceeding steps yet. He just told me
15   he would get back to me and we'll be
16   following forward.
17   Q.   What's the next thing you heard
18   about the purchase of the business?
19   A.   We did actually meet on a Zoom
20   call where he had told me that they were
21   looking to only sell to existing
22   contractors. Someone who already owned an
23   existing route with FedEx.
24   Q.   So essentially did you learn
25   that your offer was rejected?

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1   Krystle Ruggiero
2   A.   Yes. In essence, correct.
3   Q.   And was there discussion at all
4   about your brother -- to your best
5   recollection, your brother being involved
6   in the running of the business?
7   A.   It was just voiced to me that
8   he didn't want my brother any longer
9   involved, which I did propose that my
10   brother would be with me for the first
11   three months as I transitioned in
12   ownership. However, I didn't need my
13   brother to be a part of it. That was just
14   a backup for me so they felt secure in the
15   transition.
16   Q.   Okay.
17   A.   Because I wasn't an existing
18   contractor as I now know they wanted.
19   Q.   Okay. Did your cousin Gene
20   offer to be a BC?
21   A.   He did. So I had that
22   security, as well as two other BCs that
23   worked under J & J were excellent.
24   Q.   So, you had Kevin; is that
25   right? Joe had Kevin as a BC; is that

Page 322

1   Krystle Ruggiero
2   right?
3   A.   Potentially, Steve Ponds as
4   someone that would have been a possible BC
5   of mine.
6   Q.   And Gene Ruggiero?
7   A.   And Gene Ruggiero, who was a
8   contractor in Madison.
9   (Whereupon, an off-the-record
10   discussion was held.)
11   ARBITRATOR: These are the
12   extraction reports.
13   MR. ROTH: You may have the
14   same problem, main issues. Mine says
15   27 in Tab 28.
16   ARBITRATOR: Mine does, too.
17   MR. ROTH: 27 should be in Tab
18   27, right?
19   MR. AYES: 27 should be in 27,
20   yes.
21   MR. ROTH: We have to move
22   these back. The first few pages --
23   that's why I couldn't find it -- the
24   first few pages go back to 27, right?
25   MR. DEL BOVE: I'm putting 28

Page 323

1   Krystle Ruggiero
2   in front of the witness.
3   Q.   Let me show you 28 exhibit.
4   It's Tab 28, and you see Number 3, instant
5   messages. This is on 4/7/22.
6   Do you see that?
7   A.   Correct.
8   Q.   That was right around your
9   meeting -- right before your meeting with
10   Mike, right?
11   A.   (No verbal response.)
12   Q.   And this is from -- that
13   Ruggiero, 347-517-8720 where it says: I
14   forgot to ask you earlier. Do I have to be
15   there or on the phone tomorrow or could
16   Joey just list me as a BC?
17   Do you see that?
18   A.   Uh-huh.
19   Q.   Was that Gene's text?
20   A.   I believe so.
21   Q.   So Gene -- is that consistent
22   with your understanding that Gene told Mike
23   that he would be a BC?
24   A.   Yes.
25   Q.   Now, are there things about the

5 (Pages 320 - 323)

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1   Krystle Ruggiero
2 business you didn't know?
3   A.   Of course there are things I
4 didn't know as being a new contractor
5 because I have great BCs. I have a lot of
6 people that I could learn through and that
7 I knew had my back while I was
8 transitioning and learning.
9   Q.   And your brother and father,
10 there's things about the business they
11 didn't know when they bought it, correct?
12   A.   Right. You don't know
13 everything at first, right? So we're there
14 to learn as far as own and the process.
15   Q.   And were you going to buy the
16 business with the managers so they could
17 continue to run it?
18   A.   Yes.
19   Q.   Now, and so did you then
20 understand that your sale -- you weren't
21 going to be able to buy it from that
22 conversation?
23   A.   That's what I thought. As far
24 as the whole conversation prior, I thought
25 everything was a sure win moving forward

Page 325

1   Krystle Ruggiero
2 until I heard him say that they wanted an
3 existing contractor.
4   Q.   Did he tell you why?
5   A.   No.
6   Q.   Moving on, do you know about
7 your brother's attempts to sell the
8 business to other people? Or tell us what
9 you know, if anything, about your brother's
10 attempts to sell.
11   A.   I do know he had discussions
12 with people that were wanting to buy the
13 business.
14   Q.   And did there come a time where
15 you decided to tape record conversations
16 with Mike Scherer and Shawn Ponds and Gene
17 Ruggiero?
18   A.   There was just a time that I
19 know my brother felt uneasy with certain
20 conversations, and so just for security, I
21 wanted to tape.
22   Q.   So you taped them on your
23 phone?
24   A.   On my phone, right.
25   Q.   Now --

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1   Krystle Ruggiero
2   A.   For clarity.
3   Q.   Okay. And did you ever come --
4 well, you came to learn your brother wasn't
5 able to sell the business, right?
6   A.   Not that -- I mean, yes.
7   Q.   And was the business just
8 transferred to Shawn Ponds?
9   A.   That's what I learned, yes.
10   MR. ROTH: I have no further
11   questions. Thank you. Mr. Del Bove
12   is going to ask you questions.
13 CROSS EXAMINATION
14 BY MR. DEL BOVE:
15   Q.   Good morning.
16   A.   Good morning.
17   Q.   So, you're under oath so all
18 the same rules apply, all right?
19   You graduated college in '05,
20 you said, right?
21   A.   Correct.
22   Q.   From '05 to '08 you worked at
23 an admissions office at Manhattan College?
24   A.   I did.
25   Q.   And then from '08 to 2012, you

Page 327

1   Krystle Ruggiero
2 worked for Best Refrigeration which was
3 your father's HVAC company?
4   A.   Which has been ongoing, yes.
5   Q.   Okay. Approximately from '08
6 to 2012; is that correct?
7   A.   Yeah. On and off up until
8 2017, but it was like if need be when my
9 dad needed something.
10   Q.   Fair enough. And from 2012 to
11 2016, then you went and you worked at the
12 Mammoth University admissions office?
13   A.   Correct.
14   Q.   From '18 to '20 you were in
15 school and also continued to work at the
16 admissions office; is that correct?
17   A.   Correct.
18   Q.   And then it was in 2018 that
19 you started working for J & J, is that
20 correct, approximately?
21   A.   Approximately.
22   Q.   And while you working at J & J,
23 I think you told me that you worked about
24 twice per week for about 13 hours a week on
25 average?

6 (Pages 324 - 327)

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1   Krystle Ruggiero
2   A.   Around, yes.
3   Q.   You also weren't a salaried
4 employee, were you?
5   A.   No, I just helped out.
6   Q.   So you didn't take a salary.
7 You didn't take -- you weren't paid hourly.
8 Is it fair to say you were working for
9 free?
10   A.   Yeah, basically.
11   Q.   And when you started at J & J,
12 you didn't receive any formal training or
13 anything like that, did you?
14   A.   Just speaking with the other
15 contractors, which is my uncle and my
16 cousin and Gene Ruggiero. So I got to
17 learn a little bit prior to my brother
18 opening it. So just a bit of a formality
19 and learning about the business overall,
20 but continuing to learn.
21   Q.   Okay. But no real formal
22 training?
23   A.   No.
24   Q.   And you didn't -- I think you
25 testified you didn't get involved with the

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1   Krystle Ruggiero
2 routes really, right, with the CSAs, with
3 the contract service areas?
4   A.   I did not. My brother handled
5 that.
6   Q.   And it would be fair to say
7 back in 2018, you didn't know what CSAs
8 your brothers did or did not have?
9   A.   Yeah. We all had different
10 responsibilities.
11   Q.   And yours was not dealing with
12 the CSAs?
13   A.   Was not.
14   Q.   And as you sit here today, it's
15 fair to say you don't really know what CSA
16 you were specifically trying to buy back in
17 2021; is that correct?
18   A.   I do know the station of which
19 I was trying to buy, but like there's ins
20 and outs about the business that I was
21 relying on my managers and BCs as I got
22 involved.
23   Q.   Okay. So, fair to say you
24 weren't fully familiar with the ins and
25 outs of the business?

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1   Krystle Ruggiero
2   A.   Not a hundred percent, not yet.
3   Q.   You testified Mr. Roth showed
4 you -- you drafted an RFI in this matter,
5 correct? Or you drafted an RFI --
6   A.   I made an RFI.
7   Q.   You drafted it, right?
8   A.   I did.
9   Q.   Okay. I think you testified
10 that you said you didn't use any other
11 documents or anything to help you?
12   A.   I didn't, but I did have my
13 brother oversee it before handing it in.
14 So I did have help that way.
15   Q.   I am going to show you side by
16 side. This is not going to be in evidence
17 or anything. It's just a demonstrative.
18 And take a look at this. It's about a
19 five- or six-page document.
20   A.   Uh-huh.
21   Q.   So it's fair to say that your
22 RFI appears on the left-hand portion of the
23 page, correct?
24   A.   I see that.
25   Q.   I'll represent to you that

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1   Krystle Ruggiero
2 Joe's RFI from back in 2018 appears on the
3 right-hand portion of the page. You see
4 that?
5   A.   I see that.
6   Q.   Take a look and flip through
7 about five or six pages here. And I'll
8 represent to you that the highlighting
9 indicates word-for-word cut and paste of --
10 cut and paste from Joe's RFI to your RFI.
11   Do you see that?
12   A.   Okay.
13   Q.   Is it fair to say this RFI is
14 almost word-for-word similar to your
15 brother's RFI?
16   A.   It's similar, but there's an
17 agenda that you need to abide by in the
18 RFI. So it's all pretty much the same in
19 some instances and so that's why there's
20 similarities. Have I compared it to that
21 when I gave it to my brother to see what he
22 thought, I am sure he correlated that with
23 what he already made in his RFI. So maybe
24 that's why there are some similarities.
25   Q.   I mean, there's a ton of

7 (Pages 328 - 331)

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1   Krystle Ruggiero
2 highlighting here. There's more than some
3 similarities.
4   MR. ROTH: There's no question
5   pending. Asked and answered. She
6   said there are some similarities.
7   A.   Period, yeah.
8   Q.   And when you submitted the RFI,
9 you indicated that certain changes would
10 need to be made to the business, right?
11   A.   Correct.
12   Q.   You indicated that you wanted
13 different -- to hire different drivers,
14 right?
15   A.   Well, I indicated that I just
16 wanted a different format, like where the
17 helpers and drivers were working better
18 together. So, if I had to orchestrate a
19 different schedule and maybe change up
20 drivers to the helpers where they were on
21 the same trucks together. Before they
22 might work better when they're on different
23 routes, something like that, just
24 adjusting.
25   Q.   And you wanted to do that

Page 333

1   Krystle Ruggiero
2 because you testified that J & J was
3 failing service because it didn't have
4 enough manpower, right?
5   A.   I don't believe -- I don't
6 recall saying that.
7   Q.   Okay.
8   A.   There was more than enough
9 manpower.
10   MR. ROTH: Failing service.
11   A.   I don't recall that.
12   Q.   I'm turning to page 51 of your
13 deposition in this matter. Question: So
14 back then, people were not necessarily
15 showing up, question.
16   Answer: Then that would be an
17 issue, right, for failing service because
18 we don't have enough manpower.
19   Question: Okay. Anything else
20 you would do differently?
21   Answer: I think I said it all.
22   Having me read that deposition
23 testimony back to you, does that refresh
24 your recollection?
25   A.   So, when you're saying enough

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1   Krystle Ruggiero
2 manpower. So it sounds misspoken when I am
3 saying that. When the fact is that certain
4 employees would call out, I would try to
5 adjust their schedule so that that would
6 happen less. And so having enough
7 manpower, like adjusting their routes and
8 people are coming from different direction,
9 we just got moved to Yonkers. So, there
10 was a lot of transition with that alone.
11   So, that's what I was
12 discussing. Not necessarily having the
13 amount of people, but the scheduling that I
14 probably could adjust to work better. That
15 was my hope.
16   Q.   And you also agree that J & J
17 was having issues with packages being
18 returned back to the station, right?
19   A.   There has been -- there has
20 been a write-up for that I've known in the
21 past.
22   Q.   You knew it was an issue with
23 J & J?
24   A.   I know it's an issue with all
25 contractors unfortunately, but I've heard

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1   Krystle Ruggiero
2 of it happening.
3   Q.   And you worked for J & J, and
4 you didn't even know whether or not they
5 had their own handbook, correct?
6   A.   We all had a handbook according
7 to FedEx, but a privately drawn-up handbook
8 for J & J? Is that what you're saying?
9   Q.   Did J & J have a handbook?
10   A.   Its own personal handbook, it's
11 not something I have seen before.
12   Q.   Do you know if it exists one
13 way or the other?
14   A.   I know FedEx has a handbook,
15 no. Then, no.
16   Q.   And I think you also testified
17 you're not familiar with New York or New
18 York City laws on overtime, right?
19   A.   Well, I know we don't have
20 drivers drive a certain amount of time.
21 That we can't go over 40 hours a week. I
22 know that's the minimum I've ever allowed
23 to happen. That these are also things I
24 would be learning in more detail.
25   Q.   So fair to say you weren't

8 (Pages 332 - 335)

Page 336

1   Krystle Ruggiero
2 familiar with hour of service requirements
3 for trucking companies?
4   A.   That's something that the
5 manager handled.
6   Q.   And you also had no plan for
7 training drivers, other than the BC going
8 out with them on the road for two days,
9 correct?
10   A.   I mean, we do go over a safety
11 handbook and we speak to our employees
12 about that. We also have them go with
13 someone that has been on the job for quite
14 a while and train one-on-one.
15   Q.   And you testified that your
16 brother gave you a copy of the ISPA in this
17 case, correct?
18   A.   I've seen the ISPA before.
19   Q.   Other than the ISPA, you were
20 given no additional documents, right, by
21 your brother?
22   A.   No.
23   Q.   And you never went on the route
24 with your brother or any of the BCs to see
25 the route, understand the route?

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1   Krystle Ruggiero
2   A.   Well, I've met on the route
3 before, but not as on the FedEx truck.
4   Q.   Okay. As well as a part of --
5   A.   So, I do know -- I am familiar
6 with the route and the locations.
7   Q.   But I thought you testified
8 earlier that you weren't familiar with the
9 route?
10   A.   I just never went on route with
11 the trucks.
12   Q.   You also never talked to a
13 financial advisor about the transaction,
14 right?
15   A.   I did speak with someone about
16 the transaction before. I was trying to
17 figure out how I could possibly buy the
18 business.
19   Q.   Who did you speak with?
20   A.   I spoke with my bank, and then
21 I was speaking with my brother about how
22 we're going to make this happen. And like
23 I said, I do have money that I could put
24 down and we were going to figure out some
25 type of financial plan moving forward.

Page 338

1   Krystle Ruggiero
2   Q.   You said J & J, you had no
3 experience in the logistics and the pick-up
4 delivery business, right?
5   A.   I've never worked in a business
6 like FedEx before, knowing J & J.
7   Q.   I think you testified that you
8 acknowledged you had to learn DOT
9 regulations and DOT rules, right?
10   A.   Yeah. I just needed to be
11 groomed and a little bit of everything as
12 an owner.
13   Q.   And you also, I think,
14 testified you weren't familiar with the
15 maintenance requirements and you had to
16 learn those, as well?
17   A.   Well, that's what I had a BC
18 for. They were right on point with
19 everything with J & J and willing to train
20 me as I needed. They were onsite all the
21 time.
22   Q.   Isn't it true that you really
23 had no idea of the actual volume in terms
24 of the number of packages for that specific
25 CSA?

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1   Krystle Ruggiero
2   A.   It all changes, right,
3 depending on the season. But there were
4 about 800 packages give or take -- I mean,
5 the volume, like I said, increases based on
6 season.
7   Q.   You also had no real prior
8 experience with customer service, right?
9   A.   I did get phone calls about
10 left package or undelivered package, and
11 that I would relay back to the manager and
12 they would handle that one on one, handle
13 that onsite.
14   Q.   Weren't those phone calls just
15 from your brother, though? They weren't
16 from actual FedEx customers, right?
17   A.   Right. It would trickle down
18 to me, and I would keep a record of that
19 stuff, hand it to my manager to handle.
20   Q.   Okay. You told us you were
21 going to buy the business for 1.88, I think
22 you testified with Mr. Roth, right?
23   A.   Yes, I did.
24   Q.   During your deposition you said
25 you planned to put a hundred thousand down

9 (Pages 336 - 339)

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1   Krystle Ruggiero
2 for payment?
3   A.   I didn't say an amount exactly.
4 I don't remember saying the exact amount,
5 but whatever need be, we would work it out.
6   Q.   But did you have a specific
7 amount you planned to put down?
8   A.   We never discussed an exact
9 amount.
10   Q.   I think you also testified that
11 your uncle Gene Ruggiero, he was never --
12 it's your understanding he was never going
13 to buy J & J from your brother; is that
14 correct?
15   A.   It wasn't my cousin that's the
16 contractor.
17   Q.   I'm sorry, your cousin, Gene
18 Ruggiero. He was never --
19   [Simultaneous Speech]
20   Q.   Fair enough. So Gene Ruggiero,
21 the FedEx contractor.
22   A.   Yes, sir.
23   Q.   You testified that he was, in
24 fact, never going to buy J & J from your
25 brother; is that correct?

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1   Krystle Ruggiero
2   A.   From what I understand, I don't
3 think he was, no, not directly.
4   ARBITRATOR: I'm sorry, the
5   uncle or the cousin?
6   MR. DEL BOVE: The cousin.
7   THE WITNESS: The cousin is
8   Gene. My uncle -- but Gene, the
9   cousin, he is a contractor for
10   Madison Avenue.
11   ARBITRATOR: He owns his own
12   FedEx routes?
13   THE WITNESS: Yes.
14   Q.   To your understanding he was
15 never going to buy Joe's route, correct?
16   A.   From what I understand, no.
17 Not that I know.
18   (Whereupon, a short break was
19   taken at this time.)
20   Q.   Would it be fair to say you
21 never communicated with FedEx Ground
22 directly, right? All communications went
23 through your brother?
24   A.   I did speak with Mike Scherer.
25   Q.   Perhaps I asked a bad question.

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1   Krystle Ruggiero
2   I am saying in your duties and
3 roles with J & J, so not talking about the
4 assignment, would it be fair to say you
5 never communicated with FedEx to dispute a
6 package or do anything like that?
7   A.   No. That was passed down
8 through my brother to me and through a
9 manager to myself.
10   Q.   All the communication went
11 through Joe, correct?
12   A.   All the communication went
13 through the manager who told my brother, so
14 it trickled down from there. They wanted
15 me to line up phone calls, like
16 distributing packages that went wrong or
17 stolen or something happened, I would make
18 a list of that and then give that to the
19 manager at the end. He would make all the
20 phone calls and handle it one on one with
21 the customer.
22   Q.   Krystle Clear never
23 incorporated, right? It never formed
24 articles of corporation, nothing like that?
25   A.   No, I never started a company

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1   Krystle Ruggiero
2 with it yet.
3   Q.   And Mr. Roth showed you Exhibit
4 28-1 which you have in front of you here,
5 which you testified was a text from Gene,
6 correct?
7   A.   Correct.
8   Q.   All right. And the text says:
9 "I forgot to ask you earlier, do I have to
10 be there or on the phone tomorrow or could
11 Joey just list me as a BC."
12   MR. ROTH: This is to Mike
13   Scherer?
14   MR. DEL BOVE: Yeah, same text.
15   ARBITRATOR: This is Gene
16   cousin.
17   MR. ROTH: Gene cousin to Mike
18   Scherer.
19   Q.   It's Gene cousin, correct?
20   A.   Correct.
21   Q.   Now, this text doesn't say
22 anything about you or your business,
23 correct?
24   A.   No, but it is insinuating the
25 BC was for me.

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1        Krystle Ruggiero
2    Q.   Doesn't it, in fact, say could
3  Joey just list me as a BC, correct?  It
4  doesn't say Krystle just list me as a BC?
5        MR. ROTH:  We'll stipulate it
6    says Joey, not Krystle.
7        MR. DEL BOVE:  Let the witness
8    answer, please.
9        MR. ROTH:  She doesn't need to
10   answer.  We'll stipulate to it.
11   A.   No, no.  It does say his name,
12  but it was based on me buying the business.
13  That's why there'd be a BC at all.
14   Q.   Okay.  But it doesn't say that,
15  fair?
16       MR. ROTH:  Asked and answered.
17    You don't have to answer.
18   A.   Unfortunately, it doesn't say
19  that there.  It says Joey.  He said Joey
20  instead of my name.  I see what you're
21  saying, however, that's --
22   Q.   And you testified you were
23  relying on your business contacts and your
24  managers to advise you and train you on
25  what you needed to know, right?
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1        Krystle Ruggiero
2    A.   Well, there's a lot that I do
3  know about the business.  What I don't
4  know, I would have BCs that already handled
5  such situations where I felt comfortable
6  learning from.
7    Q.   So the BCs would be helping
8  you?
9    A.   Of course.
10   Q.   Am I correct to say that isn't
11  the AO, the owner of the company ultimately
12  the one that's responsible for the company?
13   A.   I would be responsible for the
14  company, I understand underlyingly.  But
15  with the help -- I mean, it's all of us
16  that make a company, come together, right?
17  So, that's why we do have drivers, we have
18  helpers, we have BCs, we have managers.  We
19  have -- there's all types of positions
20  that, you know, make it a positive
21  experience.
22       MR. DEL BOVE:  Okay.  No
23    further questions.
24       MR. ROTH:  Great.  No
25    questions.
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1        Krystle Ruggiero
2        ARBITRATOR:  I have a couple of
3  questions.
4        Ms. Ruggiero, could you tell us
5  again exactly what was asked of you
6  by Mike Scherer for the assignment?
7  What specific documents?  Was there
8  any specific procedure that you had
9  to follow?  What exactly did he tell
10  you.
11       THE WITNESS:  So what he told
12  me when we discussed the RFI in
13  person, he said that he would be
14  following up with me for ongoing
15  steps.  He said this looks like a
16  good purchase, and we see this
17  proceeding forward.  He will be in
18  touch with me as to what those next
19  coming steps would be.
20       ARBITRATOR:  And then what next
21  steps did you hear from him?
22       THE WITNESS:  Then when I
23  finally spoke with him again, it was
24  via Zoom.  That's when he relayed --
25  that's when he had told me that they
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1        Krystle Ruggiero
2  weren't going to -- they weren't
3  going to sell to me.  They were going
4  to sell and wanted to sell to an
5  existing contractor of FedEx.
6        So my -- the whole purchase
7  discussion was off the table at that
8  moment.
9        ARBITRATOR:  So there's no list
10  of items you had to present in order
11  to get the business?
12       THE WITNESS:  No, everything
13  was good, proceeding forward and then
14  that was the next message from him.
15       ARBITRATOR:  Okay.
16       THE WITNESS:  Unfortunately.
17  Thank you.  Yeah.
18       ARBITRATOR:  Who is your next
19  witness?
20       MR. ROTH:  I have Conrod here.
21  If we could take a quick bathroom
22  break, literally five minutes and we
23  can bring him back and then I think
24  the timing should be good.
25       ARBITRATOR:  Let's reconvene at
```

11 (Pages 344 - 347)

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Krystle Ruggiero

1
2   10:45. That gives you seven minutes.
3   (Whereupon, a short break was
4   taken at this time.)
5   XXXX
6
7
8
9
10
11
12
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15
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Conrod Newton

1
2   ARBITRATOR: Please raise your
3   right hand.
4   Do you promise to tell the
5   truth, the whole truth and nothing
6   but the truth?
7   THE WITNESS: Yes, ma'am.
8   ARBITRATOR: Okay.
9 C O N R O D   N E W T O N,
10   called as a witness, having been
11   first duly sworn by a Notary Public
12   of the State of New York, was
13   examined and testified as follows:
14 DIRECT EXAMINATION
15 BY MR. ROTH:
16   Q.   Good morning, Conrod,
17 Mr. Newton.
18   A.   Yes.
19   Q.   Tell us if you would briefly
20 your employment background.
21   A.   Employment background --
22   Q.   And talk as loud because she's
23 going to record it. So do your best.
24   A.   My employment background, I
25 started work at -- in 2007.

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Conrod Newton

1
2   Q.   2007 doing what?
3   A.   I used to work at White Castle.
4 After three months, I became a manager
5 there, and I worked until 2012 for five
6 years.
7   Q.   Let me stop you. So, you were
8 manager at White Castle for five years?
9   A.   Yes.
10   Q.   Okay. And what next?
11   A.   I move on to work at the
12 airport at Swiss Port, and I stayed there
13 until -- I was a ramp agent. I stood there
14 until 2016.
15   Q.   2012 to '16 you were ramp agent
16 at the airport?
17   A.   Yes.
18   Q.   What did you do in 2016?
19   A.   In 2016 I applied for FedEx and
20 started working with Sergio Montoya.
21   Q.   So, you worked with the people
22 that owned the route before Mr. Ruggiero's
23 company bought it?
24   A.   Yes.
25   Q.   What did you do when you first

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Conrod Newton

1
2 started FedEx?
3   A.   I was a driver.
4   Q.   And did there come a time when
5 you became a BC, a business contact?
6   A.   Yes.
7   Q.   When was that?
8   A.   That was pretty much a year
9 later.
10   Q.   So 2017?
11   A.   Yes.
12   Q.   What is a business contact?
13 What does it mean?
14   A.   In the case of the -- pretty
15 much the contractor is not around, I'm
16 second in command. You speak to me. We
17 talk about business, whatever to go on for
18 the day or you want the employees to --
19 what I am saying is that as a business
20 contact, I am second in command for the
21 boss and under the contractor.
22   I pretty much oversee all the
23 contract employees. In case they gotta --
24 I gotta make sure they take packages. They
25 want them to do something, if they make a

12 (Pages 348 - 351)

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 1           Conrod Newton
 2  mistake on a package wrong, they will give
 3  me paperwork.  I would take it, give it to
 4  them, show them how to fill it out.  And
 5  they go on the route, they talk to the
 6  customer.
 7           There might be a chance of the
 8  customer being impatient and they expect
 9  package earlier.  So they call FedEx and
10  they say, Hey, I didn't get it.  And then
11  they will say, I did deliver it to them.
12  Go back to them, have them sign it.  I
13  didn't receive it, it went back, have it
14  signed, and turn it back in at the end of
15  the day.
16     Q.   Now, so were you a BC until up
17  through 2022?
18     A.   Yes.
19     Q.   And what do you do now?
20     A.   Now I'm a driver for FedEx.
21     Q.   You're a driver for FedEx?
22     A.   Yeah.
23     Q.   Okay.  And tell me, did you --
24  while you were the BC, I guess it was 28 --
25  so you were the -- were you the number 1 BC
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 1           Conrod Newton
 2  for J & J from the date it was purchased to
 3  the date that J & J didn't own the route?
 4     A.   Yes.
 5     Q.   Tell me, did you find -- were
 6  there difficulties that you experienced
 7  being the number 1 BC for J & J with FedEx?
 8     A.   Yeah, there was a difficulties.
 9     Q.   Let's start with, what was the
10  first difficulty?
11     A.   First difficulty in what terms?
12     Q.   What?
13     A.   In what terms?
14     Q.   Well, like in trucks and
15  delivering and whatever.
16     A.   So my first difficulty is in
17  handling of the packages distributed to
18  each route.
19     Q.   Explain that.  What do you mean
20  by that?
21     A.   So, we -- let's say I go to the
22  younger terminal, for instance, right.
23  When I went there, the first month -- no,
24  the first day, let's say the first three
25  weeks.  They put all my zip codes together.
```

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```
 1           Conrod Newton
 2  I had two zip codes.  There were no routes.
 3  Everything was split up and organized
 4  before I go there.
 5           I saw the system myself.  I was
 6  like perfect, we're going to do so good
 7  there.  I was actually hyping myself, I was
 8  so impressed.  I am going to go there and
 9  do good.
10           And when I get there,
11  everything was together.  I had to spend --
12  we didn't leave the terminal -- I get there
13  6:30, I had to spend all day sorting it out
14  until 1:00 p.m.
15     Q.   Was that typical of other home
16  deliver companies, independent contractors?
17     A.   No.
18     Q.   Why not?
19     A.   No.  For that day, the other
20  contractors, them, they didn't go through
21  what we went through.
22     Q.   What did you go through that
23  was different than the other independent
24  contractors?
25     A.   What we went through was that
```

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```
 1           Conrod Newton
 2  they mixed up everything.  They pretty much
 3  told us that we don't know your routes.
 4  You guys gotta do it for yourself.
 5     Q.   And what did you have to do
 6  that was different -- what did you have to
 7  do that was different?
 8     A.   We had to manually sort out
 9  each and every package and pack it on the
10  truck.
11     Q.   The other independent
12  contractors home delivery didn't have to
13  manually sort?
14     A.   No.
15     Q.   Did you have conveyer belts
16  that you worked with?
17     A.   Yes, but we didn't get none.
18     Q.   So let me see if I -- so, there
19  were conveyer belts at the Yonkers
20  terminal?
21     A.   Yes.
22     Q.   But when you say we didn't get
23  them, what does it mean?
24     A.   Basically, they put us on the
25  outside and we had to sort out packages,
```

13 (Pages 352 - 355)

Page 356

1   Conrod Newton
2 pack it into a cart, bring it outside, pack
3 it into the truck.
4   Q.   Is that all seasons, including
5 the winter?
6   A.   Yes.
7   Q.   And how would that -- how did
8 that make it harder for you?
9   A.   Make it harder for me because
10 my drivers and helpers get frustrated and
11 go home. And I turn around, I would pack
12 the truck, turn around, deliver everything
13 and come back. Some time just because of
14 that situation in the morning upsetting
15 everyone, we -- I'll be out there late at
16 night.
17   Q.   You were delivering still late
18 at night?
19   A.   Yes.
20   Q.   Were other independent
21 contractors doing that?
22   A.   No.
23   Q.   Did you complain to anyone,
24 Mike Scherer about how J & J was being
25 treated differently?

Page 357

1   Conrod Newton
2   A.   Yes.
3   Q.   How often?
4   A.   On a daily basis, actually.
5   Q.   He was at Yonkers, also?
6   A.   Yes.
7   Q.   What did you say to him?
8   A.   I was saying why can't we fix
9 this? We need to get it fixed properly
10 because everyone else is complaining that
11 this guy's finished. This contractor come
12 back at 12:00, this contractor come back at
13 1:00, this one come back at 3:00. I got
14 family, I don't spend time with my kids.
15   What is going on? What is
16 going on? He was good. We'll get it
17 sorted it out to the P and D managers in
18 the terminal. They direct me to Mike
19 Scherer, that's the guy you talk to if you
20 have an issue.
21   Q.   So you talked to Mike Scherer?
22   A.   Yes.
23   Q.   What did you tell Mike Scherer?
24   A.   I told him, Can we fix this?
25   Q.   What did he say?

Page 358

1   Conrod Newton
2   A.   He said he is going to get it
3 fixed, but it never changed.
4   Q.   The whole Yonkers?
5   A.   The whole period.
6   Q.   The whole period?
7   A.   The whole period nothing
8 changed. Pretty much we had to do a lot of
9 manual labor.
10   Q.   As BC number one, when were you
11 generally going home?
12   A.   At eleven o'clock.
13   Q.   At eleven o'clock at night?
14   A.   At night, yeah.
15   Q.   Wow. And were you frustrated?
16   A.   Yes.
17   Q.   Why?
18   A.   Because I didn't get no time
19 for myself. By the time I get back home --
20 because I live in Brooklyn, so by the time
21 I get back home it's like one o'clock in
22 the morning. I sleep for three hours,
23 gotta get back at 5:00 to come back out for
24 6:30 again the next day.
25   Q.   Was this six days a week?

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1   Conrod Newton
2   A.   Actually it was seven.
3   Q.   Seven days a week?
4   A.   Yes.
5   Q.   And let's talk about -- let me
6 change the subject. Did there come a time
7 where you learned that Mr. -- I think
8 Pilatowski was telling drivers they could
9 get paid more from other independent
10 contractors?
11   A.   Yes.
12   Q.   Mr. Pilatowski, is that his
13 name?
14   A.   Yes.
15   Q.   Who is he?
16   A.   He's one of the P and D
17 managers.
18   Q.   At FedEx?
19   A.   Yes.
20   Q.   Tell me what you learned.
21   A.   Pretty much when my guys was
22 complaining that this contractor getting
23 out at earlier time -- when my employees
24 was complaining that contractors then
25 getting off -- the trucks was getting off

14 (Pages 356 - 359)

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1   Conrod Newton
2 at twelve o'clock, one o'clock, they went
3 to him and tell him and they said they pay
4 more money and get out earlier. I don't
5 know why you're with J & J.
6   Q.   So, you learned that the driver
7 told you that Pilatowski told him he can
8 get more money with other independent
9 contractors?
10   A.   Yes.
11   Q.   How often did that happen?
12   A.   That happened on a weekly
13 basis.
14   Q.   Did drivers leave?
15   A.   Yes, four of my drivers leave
16 and I had to get four more new drivers, and
17 those new drivers come in. They get into
18 in the same situation with the packages in
19 the morning and confusion and they leave,
20 too.
21   Q.   They left also?
22   A.   Yes.
23   Q.   How many drivers total did you
24 have on the routes?
25   A.   At that time I pretty much had

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1   Conrod Newton
2 seven main drivers and two extra drivers.
3   Q.   So seven and two is nine. Four
4 leaving is pretty big hit, right?
5   A.   Pretty big hit.
6   Q.   How does that affect your
7 ability to run -- to be the BC?
8   A.   That affected me really bad
9 because now I have to go on the route by
10 myself to make sure those 300 and 400 pages
11 are delivered for the day.
12   Q.   Who is Kevin McKenzie?
13   A.   He's my assistant BC.
14   Q.   Okay. Was he let go?
15   A.   Yes.
16   Q.   Tell me what your understanding
17 is of why he was let go.
18   A.   They wrongfully drug tested
19 him. He's a helper. Helper doesn't get
20 drug tested.
21   Q.   I'm sorry, I missed the
22 beginning of that. I heard a helper
23 doesn't get drug tested. Say that again.
24   A.   They wrongfully drug tested
25 him.

Page 362

1   Conrod Newton
2   Q.   What do you mean helper doesn't
3 get drug tested?
4   A.   Because when we apply for FedEx
5 as a helper, the helper, he's a helper. He
6 doesn't go to the requirements as a driver.
7 The requirements as a driver is for you to
8 be able to focus and make sure everything
9 go perfectly for the day.
10   Q.   And so they wrongfully drug
11 tested. And what happened after the drug
12 test, do you know?
13   A.   After the drug test, they
14 didn't give him a result.
15   Q.   They didn't give him result?
16   A.   No.
17   Q.   What happened next?
18   A.   They told him he can't come
19 into the terminal no more because they said
20 he failed. And three months later, after
21 three months, like six months later, they
22 said, Oh, we don't have anything against
23 Kevin. He could come back. And we was
24 like, how could he come back if he failed?
25 And they was like, No, he did not fail, he

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1   Conrod Newton
2 could come back and we was like, okay,
3 what's going on?
4   Q.   So, six months later, if I
5 understand it correctly. Who said he
6 didn't fail?
7   A.   Steve.
8   Q.   Pilatowski?
9   A.   Pilatowski, yeah.
10   Q.   So all you know is that he was
11 told he failed and then six months later
12 he's told he didn't fail and he could come
13 back?
14   A.   Yeah.
15   Q.   And by then was he doing
16 something else, Kevin?
17   A.   Pretty much, yeah.
18   Q.   Now, did you -- was there
19 pressure put on -- other than what you
20 testified to, was there pressure put on you
21 to basically just wash your hands of the
22 business?
23   A.   Wash my hands?
24   Q.   Well, was there pressure put on
25 you to basically just quit?

15 (Pages 360 - 363)

Page 364

1   Conrod Newton
2   A.   Yes.
3   Q.   Tell us about the pressure put
4 on you.
5   A.   All right. Well, plenty of
6 time I heard it mention from Mike Scherer,
7 too, said to me, Why you so loyal to Joey?
8 Why you so -- why don't you just find
9 somewhere else to go? And I didn't reply,
10 pretty much I didn't reply. I just ignored
11 it and keep on moving.
12   And then there was another time
13 that Pilatowski said the same thing.
14   Q.   He said the same thing?
15   A.   Yes.
16   Q.   When did Mike Scherer say that
17 approximately, if you remember?
18   A.   I don't have a timeline on it,
19 but it's pretty much end of 2021.
20   Q.   What about Mr. Pilatowski? He
21 said it after that?
22   A.   After that, yes.
23   Q.   When did he say it
24 approximately?
25   A.   Pretty much early 2022. 2022.

Page 365

1   Conrod Newton
2   Q.   What was your answer to these
3 guys?
4   A.   My answer was like, I am here
5 to do my best. Then after I can't do my
6 best and I can't do no more, that's it.
7   Q.   Were you also -- if drivers are
8 leaving, did that create more pressure on
9 you?
10   A.   Yes.
11   Q.   How did you get the job done
12 how -- did you get the routes filled with
13 these employees drivers leaving?
14   A.   FedEx take like seven days to
15 two -- I mean, two weeks, one week to two
16 weeks to approve a driver. So during that
17 time for those two weeks I had to put,
18 like, two routes in one truck and I took it
19 out, delivered it.
20   And there would be days that I
21 would deliver it. Came in, rushed out,
22 delivered, turned back, come back, packed
23 up and go back out and deliver it just to
24 complete the day.
25   Q.   So you did double the task; is

Page 366

1   Conrod Newton
2 that right?
3   A.   Yes.
4   Q.   Now, anything else they did to
5 put pressure on you or break you, if you
6 recall?
7   A.   Our packing situation in the
8 terminal, like, we didn't get a space to
9 park the truck so they could load it
10 properly. So they put us on the side of
11 the building.
12   And when they put us on the
13 side of the building -- and when they put
14 us on the side of the building, we have
15 to -- when the contractors are moving, we
16 had to reverse back out the terminal to
17 drive back in to continue packing.
18   Q.   And that was difficult?
19   A.   It was very frustrating.
20   Q.   Let me switch gears. Did there
21 come a time where you talked to Joey about
22 buying the business?
23   A.   Yes.
24   Q.   When was that?
25   A.   In 2021. I'm not too sure on

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1   Conrod Newton
2 the months, but in 2021 I spoke to him. He
3 was standing right beside Mike Scherer
4 together and they were talking about the
5 situation of the trucks. And I was like,
6 it would be better if I took off of the
7 routes and he said okay.
8   Q.   Who is "he"?
9   A.   Who is he?
10   Q.   You said he said okay.
11   A.   Yeah. Both Joey and Mike
12 Scherer said okay. Joe was like that's
13 pretty good. And I was like, Okay, cool.
14   He said to Joe, Let's go and
15 talk more better. So they went off and
16 talked, and then Joe came back and said
17 Mike Scherer said no.
18   Q.   Was this in connection with
19 purchasing one of the ZIP codes, either
20 10035 or 40?
21   A.   It's 127th.
22   Q.   27th, okay.
23   And did you come to learn why
24 Mike Scherer said no?
25   A.   Joey told me FedEx is doing a

16 (Pages 364 - 367)

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1   Conrod Newton
2 merger for the overlap.
3   Q.   What's an overlap?
4   A.   Overlap is a merger between
5 ground and home delivery coming to be one.
6   Q.   So do I understand that FedEx
7 wanted an overlap over you?
8   A.   Yes.
9   Q.   Did you discuss price with Joey
10 or was that the extent of it?
11   A.   Yeah, we discussed price.
12   Q.   Did you come up with an
13 agreement?
14   A.   Yeah. It was supposed to be --
15 starting off it was supposed to be --
16 because I showed my credit line, and it
17 started off at 500,00, and then I would
18 pay -- my next payment 300,000 over the
19 course of the time.
20   Q.   Okay. And who ended up --
21   Did Angel Pena end up getting
22 it?
23   A.   Yes.
24   Q.   This is a route that Angel got,
25 not Shawn Ponds?

Page 369

1   Conrod Newton
2   A.   No. Shawn Ponds got the 27th,
3 the one that I asked for and Angel Pena got
4 the 35 ZIP.
5   Q.   And your conversation was about
6 the 27 or 35, if you remember?
7   A.   Technically, it was about both.
8 I was mainly focusing on 27.
9   Q.   And that was the extent of it.
10 You basically learned from Joe that Mike
11 said no and it went nowhere?
12   A.   Yeah.
13   Q.   It didn't even get to a point
14 where you prepared an RFI?
15   A.   No.
16   Q.   Now, are you familiar with the
17 term "business discussions"?
18   A.   Yes.
19   Q.   What's a business discussion?
20   A.   Business discussion is whenever
21 a contractor is failing, he's written up
22 discussion to say what do you improve on to
23 make business survive better.
24   Q.   And did you -- is that also a
25 conversation between FedEx and the

Page 370

1   Conrod Newton
2 independent contractor?
3   A.   Yes.
4   Q.   Were you ever part of a
5 conversation with FedEx about a business
6 discussion?
7   A.   No.
8   Q.   Never?
9   A.   Never.
10   Q.   Okay. So -- and how did you --
11 well, were there any instances where you
12 believe that J & J was being faulted for
13 delivery when it should have come under a
14 different contractor?
15   A.   Yes.
16   Q.   Tell us about that.
17   A.   Some of the J & J packages were
18 offset to other contractors. Let's say one
19 of our routes, they claimed that we was
20 failing. I didn't see that because like I
21 told you, I went out there myself to take
22 two routes out and I still come back with
23 an empty truck, no complaints, everything
24 was good.
25   But they still took off our

Page 371

1   Conrod Newton
2 doorman. They pretty much go to our routes
3 and pick out all the doormen and package
4 room locations and give it to another
5 contractor.
6   Q.   When you say "they," you mean
7 FedEx gave it to a different contractor?
8   A.   Yeah, FedEx.
9   Q.   Are there instances where FedEx
10 gave packages that you were supposed to
11 deliver to other contractors?
12   A.   Yes, yes.
13   Q.   And tell me what happened in
14 connection with that.
15   A.   So in connection with that now,
16 we was getting complaints and disputes and
17 failures off of what they give them. Me
18 and Kevin was like, Oh, they fail and the
19 doorman and package room route. Packages
20 getting left outside the building because
21 they didn't know they had to buzz a certain
22 place to get their package in.
23   Q.   Go ahead.
24   A.   Because some of the addresses,
25 they run vice versa. So, you are on this

17 (Pages 368 - 371)

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1   Conrod Newton
2 avenue here and it said 9900 and over here
3 on Lexington it said 9900. So they would
4 drop 9900 Madison at Lexington and 9900
5 Lexington on Madison.
6   And they would get a lot of
7 mix-ups, so we would get pretty much two
8 times of this paperwork to fill out. When
9 I look at it, I see ID numbers that doesn't
10 match to the guys' IDs. I am like, Where's
11 this coming from?
12   And Tyler, she's one of the
13 P and D managers, too. And she said forget
14 about it. Because I went to her, was like,
15 Hey, these are not my people. Why are my
16 stops on their trucks? I guess it was on a
17 need-to-know basis so we didn't know about
18 it because, but they made a mistake and
19 gave it back to us.
20   That's when I'm like, Hey,
21 you're pretty much robbing us. It's
22 supposed to be on our truck and you are
23 giving it to someone else and we're
24 disputing the complaints; that's not right.
25   Q.   Do I understand that there were

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1   Conrod Newton
2 disputed complaints that were, I think you
3 said twice the size of those papers?
4   A.   Yes, yes.
5   Q.   Those were complaints of the
6 J & J business even though that was not a
7 fault of the J & J business?
8   A.   Yes.
9   Q.   And did you tell FedEx that?
10   A.   Yes.
11   Q.   And what did they say?
12   A.   They said -- they told me
13 forget about it, don't worry. That's not
14 yours.
15   Q.   Tell me, how many packages --
16 you were the BC number one, so you know how
17 many packages were approximately delivered
18 a day, correct?
19   A.   Yes.
20   Q.   How many packages were
21 delivered on average a day?
22   A.   On average, we pretty much get
23 like over 1500 to 2,000 per day. And out
24 of all of that, I will say we probably
25 brought back like 20. 20 pieces.

Page 374

1   Conrod Newton
2   Q.   So did you believe that -- how
3 did you believe your company performed when
4 it comes to delivering a package for FedEx?
5   A.   They performed really good.
6   Q.   Why do you say that?
7   A.   Because I do walk around at
8 times and look at other contractors to see
9 who bring back more, and there are a lot of
10 contractors that bring back more packages
11 than us. I used to wonder why they're
12 saying we failing when we're doing better
13 than everybody else.
14   Q.   Did you ever get an answer to
15 that question?
16   A.   No. I never get an answer.
17 They told me my boss need to be here for me
18 to answer the question.
19   MR. ROTH: I have no further
20   questions.
21   (Whereupon, a short break was
22   taken at this time.)
23   ARBITRATOR: Okay. We're back
24   on the record with cross-examination
25   of Conrod Newton.

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1   Conrod Newton
2   You're still under oath,
3   Mr. Newton. Do you understand that?
4   THE WITNESS: Yes, ma'am.
5 CROSS EXAMINATION
6 BY MR. DEL BOVE:
7   Q.   Good morning, sir. I have a
8 few questions for you.
9   A.   Good morning.
10   Q.   When did you start working for
11 Sermont Express?
12   A.   2016, but -- it's in August
13 2016.
14   Q.   Okay. When did you switch over
15 to J & J?
16   A.   It was a year later. So J & J
17 spent one year and like three months. So
18 company switch over to J & J probably 2017,
19 in either January or February.
20   Q.   And how long did you work for
21 J & J for?
22   A.   Working for J & J from 2017 to
23 2002.
24   MR. ROTH: '2 or '22?
25   A.   No, sorry. 2022. Sorry, I'm

18 (Pages 372 - 375)

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1   Conrod Newton
2 not thinking straight.
3   MR. ROTH: It's okay, I do it,
4   too.
5   Q.   Are you currently working for a
6 contractor now?
7   A.   Yes.
8   Q.   The name of that contractor is
9 ULUG, right?
10   A.   Yes.
11   Q.   Did you start working for them
12 in June 17th of 2021?
13   A.   June.
14   Q.   17th of 2021.
15   A.   No.
16   Q.   I am going to show you -- it's
17 not in evidence, but I am going to show you
18 what's called an association information
19 printout. I only have one copy, but I'll
20 circulate it here.
21   If I show you that it says
22 effective date and it lists June 17th,
23 2021, and it lists the ISP name as ULUG,
24 does that refresh your recollection as to
25 when you started to work for ULUG?

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1   Conrod Newton
2 contingency? Have you ever heard that term
3 before?
4   A.   No, I didn't hear that term.
5   Q.   And so you're not aware that
6 FedEx Ground has to pay more money to be
7 able to run contingency; is that correct?
8   A.   The term, I don't know. Can
9 you explain it more better to me?
10   Q.   Sure. Well, fair to say,
11 though, you're just not familiar with the
12 term, right?
13   A.   Yes. Can you explain it to me?
14   Q.   Sure. When you run a
15 contingency, it means I am having another
16 contractor deliver packages.
17   A.   Okay.
18   Q.   When you were delivering
19 packages for J & J, you'd have to log in to
20 your scanner, right?
21   A.   Yes.
22   Q.   And those scanners would keep
23 track of how many hours you were working,
24 right?
25   A.   Yes.

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1   Conrod Newton
2   MR. ROTH: Objection. He never
3   said he needed his recollection
4   refreshed. He said he didn't start
5   for ULUG till 2022.
6   Q.   Is that your answer?
7   ARBITRATOR: Can I see that?
8   A.   No, because I was still going
9 back and forth. I am still on the list for
10 J & J. If you check it right now, I am
11 still in the list as BC. I never get
12 removed.
13   Q.   Do you know what a right to
14 ensure service is? Have you ever heard
15 that term?
16   A.   No.
17   Q.   Are you aware FedEx Ground has
18 a right to ensure service for its
19 contractors?
20   A.   No.
21   Q.   Do you know what a contingency
22 contractor is? Have you heard that term?
23   A.   No.
24   Q.   And so fair to say you don't
25 know what it means for FedEx Ground to run

Page 379

1   Conrod Newton
2   Q.   And you're a contractor so
3 you're familiar with hour of service rules,
4 correct?
5   A.   Yes.
6   Q.   You're aware there are certain
7 limits on the amount of hours you could
8 work per day, per week, correct?
9   A.   Yes.
10   Q.   So would you agree with me it
11 would be impossible for you to work from
12 6:00 a.m. to 10:00 p.m. or whatever seven
13 days a week?
14   A.   I get why you say that part.
15 Let me explain better to you. First, FedEx
16 doesn't allow us to log in to the scanner
17 until you're able to drive in the terminal.
18 So that's why the hours are so different
19 from what you got on the paper. If I scan
20 my ID to walk inside the terminal, it
21 should be a different time to the time I
22 walked out. You get what I'm saying?
23   I am not going to log in to the
24 scanner while I am sorting the packages and
25 moving it around.

19 (Pages 376 - 379)

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1          Conrod Newton
2     Q.   Understood.  Go ahead.
3     A.   Because when I started at home
4  delivery, we used to scan the packages on
5  the pallets.  Do you remember that?
6          We scan packages on the
7  pallets.  Do you remember that?  No?  When
8  we scan it on the pallets, it usually
9  violate that time stop.  Violated it a few
10 times because I had to do a pick-up for
11 people that -- from the old terminal, used
12 to be from the other terminal.
13         He used to pull the same stunt
14 with Joey.  They tried to take advantage of
15 him.  So I got BC to cover for other
16 routes.  So when I take extra, I used to
17 have a weekly threshold of 70 hours, that's
18 what he's trying to say.  That's why I
19 asked him to explain it better to me.
20    Q.   I'm not sure what you're asking
21 me, but part of the process is for me to
22 ask the questions.  I think you answered
23 the question.  Fair enough.
24         ARBITRATOR:  Were you saying
25    violate?
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1          Conrod Newton
2          THE WITNESS:  Yeah.  Violate
3     the hours of service, that's why he
4     said contingency.  I didn't
5     understand that.
6          ARBITRATOR:  I think
7     contingency is something else.  It
8     has to do with alternative
9     contractors delivering for J & J.
10    Then the second line of questioning
11    was about the hours.
12         And I just want -- I wasn't
13    sure whether you used the word
14    "violate."
15         THE WITNESS:  Yeah.  With DOT
16    if you go over -- I think it is 60 or
17    70 hours for the week, you violate
18    the hours of service because you have
19    a certain slip period for a driver to
20    be off the road.
21         So, what they do now, instead
22    of have the drivers scan the boxes in
23    the morning, the terminal will scan
24    it for you and pack into the truck.
25    Then you log in to the scanner and
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1          Conrod Newton
2     you drive out.
3          So whatever time when I leaving
4     out at one o'clock in the afternoon,
5     I am only going to log in to the
6     scanner at one o'clock.  So I work
7     from 1:00 to 11:00, they count
8     ten-hour to eight-hour shift.
9     Instead of putting from when I walked
10    into that terminal.
11         The time I gave earlier was the
12    time I walk inside the terminal until
13    I walk outside.
14         ARBITRATOR:  Okay.
15    Q.   Sir, you agree you worked for
16 J & J, correct?
17    A.   Yes.
18    Q.   It's J & J's job and
19 responsibility to be monitoring its drivers
20 and employees and making sure they're not
21 violating hours of service requirements,
22 right?
23    A.   Yes.
24    Q.   And as a BC, that falls on you
25 to make sure people are not violating that?
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1          Conrod Newton
2     A.   Yes.  Because as a BC, even
3  though it says BC is required by me to make
4  sure no one is violating that hours, is
5  also on FedEx for -- to advise us on that
6  part.
7          Because the thing about it,
8  even though we didn't got fully monitored
9  off the system as yet.  This was a new
10 moving over.  If you think about it, I
11 started in 2016, 2017.  J & J came in and
12 was still scanning on pallets.
13         In 2018, that's when for home
14 delivery they started to scan the packages
15 for us.  Right?  Is it 2018 or 2019, they
16 started scanning for us.  Before that they
17 never did that.
18         FedEx Ground does it the way
19 after scanning it and loading on the truck
20 for them in a certain timeline.
21    Q.   You agree that FedEx advises
22 you via business discussions as to hours of
23 service?
24    A.   Advises us for our business
25 discussions of hours of service?  Not with
```

20 (Pages 380 - 383)

Page 384

1   Conrod Newton
2 J & J.
3   Q.   You're aware that Mike Scherer
4 is not in operations, right? He's not
5 responsible for running the terminal,
6 correct?
7   A.   Yes.
8   Q.   Okay. In fact, he deals with
9 contractor relations, right?
10   A.   Yes.
11   Q.   So you would agree with me it
12 wouldn't make sense to complain to Mike
13 Scherer about any situations at the station
14 if he's, in fact, not responsible for
15 operations?
16   A.   That's the thing, right? Mike
17 should be on J & J's side as contractor
18 relations. Mike Scherer supposed to be on
19 J & J's side as contractor relations. If
20 we have an issue, we're supposed to direct
21 it to him, to Mike Scherer. Mike Scherer
22 supposed to direct it back to the terminal.
23   When we got to Yonkers, he was
24 more on the side of the terminal, not the
25 side of the contractors. Because even

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1   Conrod Newton
2 though JT and RV Shipping was -- they got
3 these parts, they were comfortable. They
4 still have little issues and they still
5 will reach out to Mike Scherer to adjust it
6 for them. It's not just J & J.
7   He's supposed to be on our
8 side, not on the terminal side.
9   Q.   Did you have any conversations
10 with Mr. Roth or Joe prior to coming here
11 today?
12   A.   I had to. That's how I get
13 here.
14   Q.   Other than explaining to you
15 where the building is, the address, did you
16 have any conversations with them about your
17 testimony here today?
18   A.   No. They told me to come and
19 speak and tell the truth. Like, pretty
20 much tell them what I went through.
21   Q.   When you were working for Joe,
22 would he sometimes pay you in cash?
23   A.   No. What he did --
24   Q.   He never paid you in cash?
25   A.   No.

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1   Conrod Newton
2   Q.   Would he sometimes buy lunch
3 for you?
4   A.   Yes.
5   Q.   As far as you know, is that
6 improper? Is that incorrect in any way?
7   A.   No, because everything is on my
8 checks pretty much.
9   Q.   Were you responsible for
10 handing out paychecks to the other
11 employees?
12   A.   Yes.
13   Q.   Would you do that on a weekly
14 basis?
15   A.   Yes.
16   Q.   You came here today to tell the
17 truth, right?
18   A.   Yeah.
19   Q.   Isn't it true, though, that
20 you're either currently or recently under
21 investigation by FedEx for stealing an
22 iPhone worth $500?
23   A.   Yes.
24   Q.   And on June 27th this year, a
25 customer made a complaint about you?

Page 387

1   Conrod Newton
2   A.   About what, the iPhone?
3   Q.   About the iPhone?
4   A.   Yes. I'll tell you about that.
5 Pretty much, this is the deal with that
6 stop. That stop has a lot of issues going
7 on with them, and they said they got
8 scammed before. They got a bunch of stuff
9 going on.
10   In the morning, I am driving a
11 boat truck. Boat truck is a 26-foot box
12 truck that I don't stop myself. I don't
13 rearrange, nothing. Pretty much if that
14 truck went out and I am missing something
15 off of it, I am on camera. When I pull up
16 to the location to offload the package to
17 those guys, they came down and they took
18 everything from my truck right there.
19   And then I call my manager and
20 say, Hey, my scanner says twelve pieces,
21 but I only got eight, so four was missing.
22 Pretty much they said that iPhone is
23 stolen, but three other packages got
24 delivered by someone else, not me. So how
25 does that count?

21 (Pages 384 - 387)

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 1          Conrod Newton
 2     Q.   Wasn't it true during the
 3  course of that investigation -- you spoke
 4  with FedEx security, right?
 5     A.   Uh-huh.
 6     Q.   You gave a statement?
 7     A.   Yes.
 8     Q.   And you initially stated that
 9  the iPhone wasn't on your truck, right?
10     A.   Yeah, it wasn't on my truck.
11     Q.   But then later you told
12  security that the rear of the truck, the
13  door was malfunctioning and you believe the
14  package fell out of the back of the truck?
15     A.   No.  They were trying to coerce
16  my words to say that the rear of the truck
17  was open.  That they were trying to say, Is
18  it the rear that was open?  Is it possible
19  someone went into your truck?  I told them
20  no.
21     Q.   Are you still suspended for
22  that?
23     A.   No.
24     Q.   You were reinstated?
25     A.   Yes.
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 1          Conrod Newton
 2     Q.   You're currently working for
 3  ULOG?
 4     A.   Yes.  I am clear and I am good.
 5     Q.   Earlier you testified Joe was
 6  going to attempt to assign you J & J; is
 7  that correct?
 8     A.   Yes.
 9     Q.   And you discussed -- you were
10  talking about the sale of -- simultaneously
11  talking about the sale of two ZIP codes?
12     A.   Yeah.
13     Q.   But isn't it true that Joe had
14  sold one of those ZIP codes years prior to
15  that discussion?
16     A.   Not really.  Because the only
17  one that he sold like years prior was the
18  40 ZIP.  But when me and Joe had a
19  discussion, he had 27 and the 35 ZIP
20  together.
21     Q.   So, you believed you were going
22  to be buying both the 27 and the 35?
23     A.   No.  I asked him for one of
24  them.  Whichever one he would give me, I
25  would take.
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 1          Conrod Newton
 2     Q.   When did that conversation take
 3  place, roughly?
 4     A.   It was back in like early 2021.
 5  It's either early 2021 or later 2020.  But
 6  I know it was around there.  It was around
 7  that time.  It's between November to
 8  February, the time slot.
 9     Q.   You indicated that you were
10  going to get a $500,000 loan, correct?
11     A.   Yes.
12     Q.   And you were going to finance
13  the rest of the deal?
14     A.   Yes.
15     Q.   You never put together an RFI?
16     A.   No, it didn't get that far.
17  This is between me and him discussion, and
18  he mentioned it over to Mike Scherer.  Mike
19  Scherer says, Good idea.
20          Then he come back to me as I
21  said earlier and tell me, he said, no go.
22          ARBITRATOR:  Was it Mike that
23     said it was no go?
24          THE WITNESS:  Joe told me Mike
25     said that.  Because they went off to
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 1          Conrod Newton
 2     talk, so that's why.
 3     Q.   And other than what you told
 4  us, fair to say you didn't take any other
 5  steps to attempt to buy the business?
 6     A.   In 2022 he called me back and
 7  tell me it's a go and do you want it still?
 8  And I said yes.  And I call him back, like,
 9  probably a day later, couple of hours
10  later.  I guess he mentioned off to Mike
11  Scherer because, you know, he's contractor
12  relations.
13          So when he mentioned it to him,
14  he was pissed off.  This guy don't want to
15  sell it to you.  He's saying the overlap
16  and stuff like that so...
17     Q.   When did that call take place?
18     A.   That was in 2022.
19     Q.   Do you remember the month?
20     A.   No, I don't remember the month.
21  Like I said, I never came off his -- even
22  though I was associated with ULUG, I still
23  used to go on weekends.  So, you know, it's
24  seven days a week.
25     Q.   In 2022, did you take any steps
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22 (Pages 388 - 391)

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 1          Conrod Newton
 2 such as checking your credit or getting a
 3 loan?
 4    A.   No.
 5    Q.   Earlier you testified that you
 6 never conducted any business discussions
 7 with FedEx; is that correct?
 8    A.   No -- yeah.
 9    Q.   You never did?
10    A.   Yes, I never did.  It never
11 went that far.
12    Q.   It never went that far, okay.
13         So I am showing you what's been
14 previously produced as FedEx 461.  And this
15 is a business discussion dated February 7th
16 of 2020, and you see your name there as
17 business contact, Conrod Newton.  You see
18 your name there?
19    A.   Okay, cool.
20         MR. ROTH:  Where you looking?
21         MR. DEL BOVE:  Center of the
22     document.
23    Q.   You see your FedEx ID there?
24    A.   Yes.
25    Q.   Is that your FedEx number, your
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 1          Conrod Newton
 2 ID?
 3    A.   Yes.
 4    Q.   And you see at the bottom of
 5 the page where it says:  Manager discussion
 6 summary.  I met with the BC and made him
 7 aware of the discussion.  BC understood.
 8         It goes on to discuss the
 9 specific incident.  You can read it to
10 yourself if you'd like.  But seeing this
11 document, does this refresh your
12 recollection as to whether you had any
13 business discussions with FedEx?
14    A.   No.  Because this is deal with
15 FedEx when I -- so this is Julia.  So this
16 wasn't our discussion with her.  This was
17 more of a -- she was on the phone with Joey
18 and Joey told us I cosign off on it.  That
19 was it.  It wasn't a discussion.
20    Q.   Okay.  But fair to say on or
21 about February of 2020, you had some
22 conversation with Julia Tamora Creed; is
23 that correct?  You had a conversation with
24 her?
25    A.   No.  She and Joey had a
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 1          Conrod Newton
 2 conversation over the phone, and he told me
 3 this is okay.
 4    Q.   Do you believe this document is
 5 a falsified or incorrect in some way?
 6    A.   It's not falsified.  But me and
 7 her sitting, having a discussion like we
 8 are right now, no.
 9    Q.   But it says met with the BC.
10 Is it fair to say you never met with her?
11    A.   Correct.
12    Q.   I am handing you what's
13 previously been produced as FedEx 459.
14         MR. ROTH:  Do you want to mark
15     these exhibits?
16         MR. DEL BOVE:  Yeah, we will.
17         ARBITRATOR:  Are these in the
18     exhibit book?
19         MR. DEL BOVE:  They're not.
20     It's for impeachment.
21    Q.   And you see -- again, you see
22 your name there in the middle?
23    A.   Yes.
24    Q.   You see your FedEx ID?
25    A.   Yes.
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 1          Conrod Newton
 2    Q.   Okay.  And I'll read to you the
 3 manager discussion:  Spoke to BC about the
 4 failed signature packages.  And the
 5 document goes on, you can read it to
 6 yourself if you would like.
 7    A.   Yeah.
 8    Q.   Does seeing this document
 9 refresh your recollection as to the
10 conversation you would have had with Rosa
11 Fernandez?
12    A.   Yeah.  But this is the deal,
13 this is another business discussion.  This
14 is just -- a business discussion is one
15 time I got to write back to FedEx how I am
16 going to fix the business.  This is just a
17 complaint dispute.
18    Q.   Sir, you see the last sentence
19 of this where -- I'm not going to read it
20 to you and waste everyone's time, but the
21 last sentence states:  BC understood.
22         Do you see that there, the last
23 sentence?
24    A.   Yes.
25    Q.   So wouldn't that imply that
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23 (Pages 392 - 395)

Page 396

1   Conrod Newton
2 there was a conversation back and forth
3 between you and Ms. Fernandez?
4   A.   Yes.
5   Q.   Okay. All right. I am handing
6 you what we have previously marked as FedEx
7 460.
8   And you see your name there in
9 the middle of the document?
10   A.   Yeah.
11   Q.   And you see the day of the
12 discussion above that is February 12th,
13 2020?
14   A.   Uh-huh.
15   Q.   Again, you see the first top
16 sentence there: I spoke to BC about these
17 disputes that were never answered? The
18 bottom of the document.
19   A.   Yes.
20   Q.   So, does seeing this document
21 refresh your recollection as to whether you
22 had any business discussions with FedEx?
23   A.   Like I said, this was disputes
24 that Rosa had. And we pretty much, like I
25 told you, these were disputes that we had.

Page 397

1   Conrod Newton
2 This was one was offset -- this one wasn't
3 offset to the other contractors. This one
4 wasn't offset, but these ones was signed
5 and taken care of, but they were printed on
6 extra copies.
7   And we talked to her about it,
8 and she's -- she didn't tell me it was a
9 business discussion.
10   Q.   I am handing you one more
11 document, FedEx 464.
12   For the record, I've handed you
13 FedEx 464, which is date of discussion
14 February 19th, 2020. And again, you see
15 your name there?
16   A.   Yes.
17   Q.   I'm not going to read it to
18 you, but you see the summary of discussion
19 you had with Ms. Fernandez again? You see
20 that at the bottom?
21   A.   Yes.
22   Q.   Again, does seeing this
23 document refresh your recollection as to a
24 business discussion you had with FedEx?
25   A.   My thing is this, this is not a

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1   Conrod Newton
2 business discussion.
3   Q.   What is it, to your knowledge?
4   A.   This was just -- Rosa wanted to
5 speak to Joe and he wasn't there, right?
6 So this was company's disputes that me and
7 Joey fixed, and Rosa was still printing
8 them back up over and over.
9   Q.   Is it fair to say after looking
10 at these documents -- and I'll represent to
11 you there are many more, but for purposes
12 of time, I am going to show you these four.
13   But it would be fair to say you
14 did have many, many business discussions
15 with FedEx, right?
16   A.   But this is not a business
17 discussion. It's not a business
18 discussion.
19   Q.   I think you just said regarding
20 this business discussion, Joey wasn't
21 around. Did FedEx typically have a hard
22 time getting in touch with Joey?
23   A.   No, they're always on the phone
24 with Joey talking because during this
25 period of time, he had -- I think during

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1   Conrod Newton
2 this time, he had a death in the family. I
3 think his grandfather passed away.
4   If you check back, most of this
5 stuff occurred whenever he have like a
6 family issue. Like, they apply more
7 pressure once he's not there. So plenty
8 other times that there's business
9 discussion, because I didn't think it was
10 business discussion at the time because she
11 didn't tell me directly this is a business
12 discussion.
13   I was going to say that during
14 the time that -- that Joey not around, they
15 kind of like mess with us a lot so they do
16 extra printing of paperwork. Because there
17 was a period of time that we stay back in
18 the terminal and have guys -- when I was in
19 Q Manhattan, other guys would go to the
20 office and fill out these paperwork for the
21 tracking numbers. We call them Code 85s.
22   So when I have them fill it
23 out, they put it in their drawers and in
24 the morning, the same person, the following
25 day, they always told us, You guys don't

24 (Pages 396 - 399)

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 1          Conrod Newton
 2  get your stuff in order.  You guys don't
 3  get your stuff in order.  And I tell them,
 4  No, we did.
 5          So like a week later they would
 6  come back and say, Oh, I got this for you.
 7  At the time Rosa already submit all these
 8  things.
 9      Q.   Do you know Joseph Ruggiero,
10  Sr.?
11      A.   Yeah.
12      Q.   Joey's dad.  Was he the AO in
13  2020?
14      A.   Yes.
15          MR. DEL BOVE:  Nothing further.
16          MR. ROTH:  Before I redirect,
17      can we mark these?  I'd like to do
18      this in the order they came.  The one
19      with Bates stamp 461 is going to be
20      Joint 37.
21      (Whereupon, business discussion
22      was marked as Claimant's Exhibit 37
23      for identification as of this date by
24      the Attorney.)
25          MR. ROTH:  The one with Bates
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 1          Conrod Newton
 2      stamp 459 will be Joint 38.
 3      (Whereupon, a business
 4      discussion was marked as Claimant's
 5      Exhibit 38 for identification as of
 6      this date by the Attorney.)
 7          MR. ROTH:  The one with Bates
 8      stamp 460 would be Joint 39.
 9      (Whereupon, business discussion
10      was marked as Claimant's Exhibit 39
11      for identification as of this date by
12      the Attorney.)
13          MR. ROTH:  And then the one
14      with Bates stamp 464 would be Joint
15      40.  Okay, everyone?
16          ARBITRATOR:  Yeah.
17      (Whereupon, business discussion
18      was marked as Plaintiff's Exhibit 40
19      for identification as of this date by
20      the Attorney.)
21          MR. ROTH:  Just do me a favor,
22      can you write the numbers on it to
23      make it easier for him?
24          I'm numbering them 37, 38, 39
25      and 40.  Easier to refer to them.
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 1          Conrod Newton
 2          THE WITNESS:  Okay.  Got you.
 3          MR. ROTH:  Okay.
 4          MR. DEL BOVE:  He's got 37 in
 5      front of him.
 6          MR. ROTH:  You got them all?
 7      Just put them all in front of him,
 8      I'll wait.
 9  REDIRECT EXAMINATION
10  BY MR. ROTH:
11      Q.   Let's just look at these four
12  documents, Mr. Newton.  Looking at 37.
13      A.   Okay.
14      Q.   Which is February 7th, 2020.
15      Do you see that?
16      A.   Yes.
17      Q.   Do you see that tracking
18  number, 152610765302?  You see that
19  tracking number?
20          ARBITRATOR:  Where are you
21      reading?
22      Q.   At the bottom of the document,
23  document reference with the tracking
24  number, 152610765302.
25      Do you see that?
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 1          Conrod Newton
 2      A.   Yes.
 3      Q.   Turn to J39 -- I'm sorry, my
 4  bad.  Let me do it this way.
 5          So I understand J37 was on
 6  February 7th, 2020.  That's the date of
 7  whatever this document's called, correct?
 8      A.   Yes.
 9          MR. DEL BOVE:  Rich, the date
10      of discussion is different than the
11      date you said.  What date are you
12      going by?
13      Q.   Let's go to date of discussion.
14  February 9th, 2020, okay?  You see that?
15  Right after February in the middle, it
16  says:  Discussion detail, February 9th.
17  Right in the middle.
18      A.   Got you.
19      Q.   That's the date of discussion,
20  right?  Yes?
21      A.   Yes.
22      Q.   You never had that discussion
23  as I understand it, correct?
24      A.   No.
25      Q.   That's something Joey talked to
```

25 (Pages 400 - 403)

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Page 404

1   Conrod Newton
2 them about, correct?
3   A.   Yes.
4   Q.   Turn to J38. That date of
5 discussion is February 7th, 2020. So two
6 days earlier, correct?
7   A.   Yes.
8   Q.   That's something which I
9 think -- was it that you do recall or don't
10 recall?
11   A.   Rosa --
12   Q.   Was this something you recall;
13 you spoke with Ms. Fernandez or no?
14   A.   Yeah. I spoke to her, but it
15 wasn't a business discussion.
16   Q.   It was what?
17   A.   It was just a dispute. A
18 person never received their package.
19   Q.   Let's turn to J39. That
20 business discussion was on February 12th.
21 You see that date of discussion? 2020,
22 right?
23   A.   Yes.
24   Q.   And then let's turn to the last
25 one, J40. That's sent February 19th, a

Page 405

1   Conrod Newton
2 week later, 2020.
3   Do you see that?
4   A.   Yes.
5   Q.   And do you know when J & J's --
6 originally, you bought the business in '18,
7 correct?
8   A.   Yeah.
9   Q.   Are you aware in or about
10 August of 2020, Federal Express renewed the
11 J & J contract?
12   A.   I know they renewed it, but I
13 don't know the exact date.
14   Q.   You said when you originally
15 spoke to Mr. Ruggiero, who spoke to
16 Mr. Scherer about the purchase, I think you
17 said late '20, early '21.
18   Do you remember that?
19   A.   Yes.
20   Q.   And was that business -- was
21 that sold to Angel Pena?
22   A.   Not as yet.
23   Q.   That ZIP code wasn't at the
24 time?
25   A.   No.

Page 406

1   Conrod Newton
2   MR. ROTH: Okay. I have no
3 further questions.
4   MR. DEL BOVE: No further
5 questions.
6   (Whereupon, a short break was
7 taken at this time.)
8   XXXX
9
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Page 407

1   Steven Pilatowski
2   MR. AYES: Steve, can you hear
3 us?
4   THE WITNESS: Yes, I can. Can
5 you hear me?
6   MR. AYES: We can.
7   ARBITRATOR: We're starting
8 with Respondents' witness, Steve
9 Pilatowski?
10   THE WITNESS: Yes.
11   ARBITRATOR: Would you please
12 raise your right hand.
13   You promise to tell the truth,
14 the whole truth and nothing but the
15 truth?
16   THE WITNESS: Yes.
17   ARBITRATOR: Thank you.
18 S T E V E   P I L A T O W S K I,
19   called as a witness, having been
20   first duly sworn by a Notary Public
21   of the State of New York, was
22   examined and testified as follows:
23 DIRECT EXAMINATION
24 BY MR. AYES:
25   Q.   Okay. Steve, we're on a video

26 (Pages 404 - 407)

Page 408

1   Steven Pilatowski
2 connection. If you can't hear anyone or
3 there's a lag in the video, please let us
4 know before we proceed.
5   A.   Yes.
6   ARBITRATOR: And you're alone
7   in that room?
8   THE WITNESS: Yes, I am.
9   Q.   All right. Mr. Pilatowski,
10 thanks for coming here today. Can you
11 please give us the benefit of your current
12 employer? Who do you work for?
13   A.   I work for FedEx Ground.
14   Q.   And what is your current
15 position?
16   A.   I am a pick-up and delivery
17 manager.
18   Q.   And what does a pick-up and
19 delivery manager mean?
20   A.   I oversee the --
21   Q.   Can you repeat that and try to
22 talk into the mic?
23   A.   I'm sorry, yes. I oversee the
24 pick-up and delivery of packages within our
25 work areas.

Page 409

1   Steven Pilatowski
2   Q.   How long have you been in this
3 position?
4   A.   Approximately, almost 15 years.
5   Q.   And what station are you
6 currently based out of?
7   A.   Yonkers.
8   Q.   Can you give us a brief
9 overview of your educational background?
10   A.   Sure. Grammar school located
11 in Old Tappan, New Jersey. I went to
12 Bergen Catholic High School in Oradell,
13 New Jersey. And I graduated from college
14 at Long Island University with a Bachelor's
15 of Science in criminal justice.
16   Q.   How long have you been working
17 for FedEx Ground?
18   A.   A little over 26 years.
19   Q.   And have you had any other
20 roles in FedEx Ground other than a
21 P and D manager?
22   A.   Yes. When I first started, I
23 was what they call a coordinator and then I
24 worked on the outbound manager, which we
25 oversaw the picking up of the packages and

Page 410

1   Steven Pilatowski
2 distributing them into the trailers to go
3 to the hubs.
4   And then I worked on what we
5 called the preload, which is the overnight
6 shift which oversee the packages coming
7 into the building from the various hubs and
8 distributing them among the different
9 entities.
10   Q.   What is -- what's your
11 knowledge of J & J? Do you know who they
12 are?
13   A.   I know who J & J are, yes, by
14 being at Yonkers.
15   Q.   When did you first become
16 acquainted with J & J?
17   A.   When they first arrived at the
18 station. I don't know the exact date, but
19 I met them when they first came in.
20   Q.   Do you recall why they first
21 came into Yonkers?
22   A.   It was a decision by FedEx
23 engineering to realign the stations and
24 balance out the volume amongst the
25 different stations.

Page 411

1   Steven Pilatowski
2   Q.   What do you mean by "balance
3 out the volume amongst different stations"?
4   A.   Service stations were -- they
5 were -- had way too much capacity than what
6 they were engineered for. So it was a
7 decision to move certain entities around to
8 different stations that had capacity to --
9 so they could operate.
10   Q.   And was this decision made on a
11 corporate level as opposed to station
12 level?
13   A.   This was a corporate level,
14 yes.
15   Q.   Was J & J moved to Yonkers as a
16 result of any -- a disciplinary behavior at
17 their prior station?
18   A.   No.
19   Q.   Was J & J moved to Yonkers as a
20 result of any service issues at their prior
21 station?
22   A.   No.
23   Q.   Do you know where J & J's prior
24 station was located?
25   A.   Yes. It was in Queens at 3102.

27 (Pages 408 - 411)

Page 412

1   Steven Pilatowski
2   Q.   What does 3102 mean? What does
3 that stand for?
4   A.   That's just their station
5 number. Yonkers is 107 and that station
6 was Q Manhattan actually. That's their
7 call letters, Q Manhattan 3102.
8   Q.   Are you familiar with Joseph
9 Ruggiero, III?
10   A.   Yes.
11   Q.   Are you familiar with Joseph
12 Ruggiero's father?
13   A.   No.
14   Q.   When did you first meet Joseph
15 Ruggiero, III?
16   A.   When he first arrived at
17 Yonkers, within a day or two.
18   Q.   And why would you have met
19 Mr. Ruggiero within a day or two of when he
20 arrived at Yonkers?
21   A.   Just to introduce myself and
22 talk to him and just to get to know him.
23   Q.   I want you to talk to us
24 generally about how packages are loaded
25 onto vehicles. The first type being an HD

Page 413

1   Steven Pilatowski
2 or home delivery vehicle, how did that
3 process occur?
4   A.   This is done by -- first the
5 packages would arrive at the station with
6 the ZIP codes. They come in first with ZIP
7 codes, and then they are cut -- I use the
8 word "cut," to the entities through a DRO
9 system, which is a sorting system that we
10 use.
11   And they would go to the
12 different various work areas according to
13 where the AO would want his packages to go
14 to. Certain streets would go to certain
15 trucks, side streets would go to certain
16 trucks. But he would have complete control
17 over that, where he could move his freight
18 and balance out his workload for the day.
19   Q.   What does DRO stand for?
20   A.   I don't know the exact name. I
21 was -- it was always called DRO. I
22 apologize for that.
23   Q.   What about the term "work
24 areas"? What does that mean?
25   A.   It's a general work area.

Page 414

1   Steven Pilatowski
2 Every truck has a work area, that's what we
3 refer to it as. Work area is where they --
4 okay.
5   Q.   For the loading of HD packages,
6 how would the HD service provider load
7 their vehicles?
8   A.   They would load -- the driver
9 would load their own vehicle's. Packages
10 were set aside for them either in carts or
11 in pallets and then the driver would load
12 his own vehicle.
13   Q.   Were any other contractors
14 besides HD loaded that way?
15   A.   They were all loaded that way.
16   Q.   When J & J first came to the
17 Yonkers terminal, do you know where they
18 were loading from within the terminal?
19   A.   They were loaded over by what
20 we call the 100 belt by the wall, the end
21 wall there.
22   Q.   Was that inside the building?
23   A.   Yes.
24   Q.   There was testimony so far in
25 this arbitration that J & J was required to

Page 415

1   Steven Pilatowski
2 load their vehicles outside of the terminal
3 in the weather. Is that an accurate
4 statement?
5   A.   No, it is not accurate at all.
6   Q.   Why is it not accurate?
7   A.   Because they did not -- they
8 weren't pushed outside by any means. If
9 they wanted to load their vehicle outside
10 on a nice day, that was their prerogative.
11 But we wanted them inside the building for
12 security reasons and keep them inside the
13 building. They were not pushed outside for
14 any reason whatsoever.
15   Q.   Do you know what the term "load
16 positions" refers to?
17   A.   It's where a van would park on
18 the dock. It was a numbered spot, a
19 parking spot. We call it a load position.
20   Q.   Are there certain vehicles that
21 need to be loaded on the dock versus
22 another place in the terminal?
23   A.   That would be the ground
24 trucks. They're bigger and they fit up
25 against the dock, and this way the package

28 (Pages 412 - 415)

Page 416

1   Steven Pilatowski
2 handlers can load those vehicles.
3   Q.   Are there certain types of
4 trucks or vehicles that are loaded onto the
5 dock, models of vehicles?
6   A.   Yes.
7   Q.   What would those be?
8   A.   Yes. Their bumpers have to be
9 flush against the dock. So for safety
10 reasons that the package handler can step
11 into the truck and not trip. We refer to
12 them as either P 1000s or P 1200s.
13   Q.   Do you know what type of
14 vehicles J & J had when they first came to
15 Yonkers?
16   A.   They mostly had rental
17 vehicles. What I mean by rentals, they
18 were box trucks rented from Penske or
19 U-Haul.
20   Q.   The -- at some point during
21 J & J's tenure at Yonkers, did they make
22 any complaints to you about their load
23 positions?
24   A.   He mentioned it to me a few
25 times that he would like to get loaded

Page 417

1   Steven Pilatowski
2 along the van line.
3   Q.   What's a van line?
4   A.   A van line is where the
5 vehicles park and the conveyer -- and where
6 the conveyer system is.
7   Q.   Was there a reason they were
8 not able to be loaded on the van line?
9   A.   It was an operational decision
10 that was made due to their size. They were
11 a small entity that only dispatched four
12 trucks, approximately four trucks a day,
13 four or five trucks and their volume didn't
14 warrant a load position that we had
15 available at the time. So they were -- the
16 decision was made to put them -- load their
17 packages in labeled carts so they could
18 load their own vehicles.
19   Q.   Were any other contractors
20 loading the same manner that J & J was?
21   A.   Yes.
22   Q.   Can you approximate how many
23 others?
24   A.   We have approximately 16
25 entities in the building and I believe at

Page 418

1   Steven Pilatowski
2 one time every entity had work areas loaded
3 in carts.
4   Q.   And what about off the van
5 line? How many entities have been loaded
6 off the van line?
7   A.   Approximately three or four.
8   Q.   Are you familiar with the term
9 "business discussions"?
10   A.   Yes.
11   Q.   In your position as
12 P and D manager, would you have business
13 discussions with contractors?
14   A.   Yes.
15   Q.   What is the purpose of business
16 discussion?
17   A.   It's a documented discussion
18 that we use to record the events of the day
19 of an incident. It could be either a
20 service failure or a safety defect. It
21 would be noted in a business discussion.
22   Q.   And did you have business
23 discussions with J & J?
24   A.   Repeat the last word again,
25 Mitch.

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1   Steven Pilatowski
2   Q.   Did you have business
3 discussions with J & J?
4   A.   Yes.
5   Q.   Who at J & J would you have
6 business discussions with?
7   A.   Joe. Joseph, III.
8   Q.   Would you have --
9   A.   And his BC.
10   Q.   Who was the BC or BCs that you
11 had discussions with?
12   A.   Andrew McKenzie.
13   Q.   Any others?
14   A.   Conrod.
15   Q.   Is that Conrod Newton?
16   A.   Yes, sir.
17   Q.   If there was testimony in this
18 case from Andrew and Conrod that they never
19 had business discussions with Ground, would
20 you agree with that statement?
21   A.   I would not agree with that
22 statement.
23   Q.   At some point did J & J get a
24 position on the van line to load vehicles?
25   A.   Yes, they did.

29 (Pages 416 - 419)

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1   Steven Pilatowski
2   Q.   Okay. Why did they get a
3 position to load vehicles?
4   A.   Again, there was another
5 engineering decision to move three or four
6 entities out of our building, which freed
7 up some van line space. And then we put
8 J & J on a van line where they could back
9 up their trucks up to the dock, the HD side
10 and they can load their vehicles.
11   Q.   Do you know who Mike Scherer
12 is?
13   A.   Yes.
14   Q.   Is Mike -- does Mike Scherer
15 report to you?
16   A.   No.
17   Q.   Do you report to Mike?
18   A.   No.
19   Q.   Is Mike in a different segment
20 of the business than you are in?
21   A.   Yes, he is.
22   Q.   Would Mike -- is Mike in the
23 operations department of the business?
24   A.   He's not in operations, no.
25 He's business development solutions.

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1   Steven Pilatowski
2   Q.   So, that's the group that
3 Mike's in, right?
4   A.   Yes, sir.
5   Q.   If there was a service
6 provider, whether it be an AO or BC that
7 had a complaint or wanted to have a
8 discussion, would they go to your group to
9 have that discussion?
10   A.   They can come to our group, or
11 they can reach out to Mike Scherer.
12   Q.   If there were operational
13 discussions in terms of an issue with
14 service that occurred, would that be
15 discussed with your group?
16   A.   Yes.
17   Q.   The term "overlap" has come up
18 throughout the course of this arbitration.
19 Can you tell us what that means?
20   A.   Yes. Overlap is when an entity
21 has both ground and HD in their work area.
22   Q.   And are the overlap contractors
23 loaded in a different manner?
24   A.   Their ground trucks are loaded
25 by package handlers, but their HD routes

Page 422

1   Steven Pilatowski
2 are -- again, they're either carted or
3 they're put on pallets and they load them
4 on the trucks.
5   Q.   There's testimony from
6 Mr. Ruggiero's BCs that you told drivers
7 that they might be able to make more money
8 working for other contractors. Is that a
9 true statement?
10   A.   No, that is not a true
11 statement at all.
12   Q.   Did you ever discuss money or
13 how much a driver can earn with
14 contractors?
15   A.   No.
16   Q.   Does FedEx have any incentive
17 to pull any packages from any of their
18 service providers?
19   A.   The only incentive would be to
20 provide service, but if they're failing in
21 service, we get the packages delivered for
22 the customer and the shipper.
23   Q.   So in order to keep the
24 business operating and continuing; is that
25 right?

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1   Steven Pilatowski
2   A.   That's correct, to keep the
3 business going.
4   Q.   There's no incentive that FedEx
5 has to pull packages other than to make
6 sure the business is continuing to operate
7 properly; is that correct?
8   A.   Correct.
9   MR. ROTH: I have to object. I
10   can talk about this guy, but FedEx's
11   incentive to pull packages? Unless
12   his name is FedEx, I don't know if
13   there's even foundation that says he
14   knows where packages went to and from
15   in which they were pulled. So the
16   question is improper.
17   ARBITRATOR: Overruled. We'll
18   take it for what it's worth.
19   Q.   Are you aware of any packages
20 that were pulled from J & J's service area?
21   A.   Yes.
22   Q.   Why did that occur?
23   A.   Failure to provide service.
24   Q.   What do you mean by that?
25   A.   He didn't have enough resources

30 (Pages 420 - 423)

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1   Steven Pilatowski
2 to provide service that -- those particular
3 days, so the packages were given to other
4 entities who had extra resources to deliver
5 the packages.
6   Q.   When you say the term
7 "resources," what are you referring to?
8   A.   Drivers, helpers, trucks.
9   Q.   So there were certain
10 situations where J & J didn't have those
11 resources in order to deliver the packages;
12 is that right?
13   A.   That is right. Correct.
14   Q.   The other day we heard
15 Mr. McKenzie testify -- and you know who
16 Mr. McKenzie is, correct?
17   A.   Yes.
18   Q.   We heard Mr. McKenzie testify
19 that Joe Ruggiero was not always at the
20 station. Would you agree with that
21 statement?
22   A.   Yes.
23   Q.   Were other contractors or other
24 AOs, authorized officers, at the station
25 more than Joe?

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1   Steven Pilatowski
2   A.   Yes.
3   Q.   Did you have any conversations
4 with Joe about being at the station more?
5   A.   Yes. I've had conversations
6 with him.
7   Q.   Can you describe what those
8 conversations were?
9   A.   Yeah. I just asked him if he
10 needs to come to the station more often to
11 see his operation and see what's going on.
12 He needs to be in a more leadership role
13 and organize his people to show an
14 interest.
15   Q.   Why did you have these
16 conversations with Joe that you wanted him
17 to show more of an interest and be involved
18 in more leadership?
19   A.   I feel he needed to be there
20 more than he was there because I wanted to
21 talk to the AO. I didn't want to talk to
22 the BCs anymore. I wanted to talk to the
23 AOs because things just weren't getting
24 better.
25   Q.   What is the purpose of an AO at

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1   Steven Pilatowski
2 the station?
3   A.   It's the face of the entity.
4 He's the owner and he's the leader.
5   Q.   Are you aware of what a scanner
6 is?
7   A.   Excuse me again?
8   Q.   Do you know what a scanner is?
9   A.   Yes. A scanner, yes.
10   Q.   What is a scanner?
11   A.   A scanner is a device used to
12 capture the information on a package, on a
13 barcode to give realtime information to the
14 shippers, to the customers, where their
15 package is and to record the delivery or
16 the exception codes on the package.
17   Q.   Do service providers have
18 scanners?
19   A.   Yes, they do.
20   Q.   How do the service providers
21 get the scanners?
22   A.   They purchase them through a
23 scanner company.
24   Q.   Are there any other ways
25 they're able to obtain scanners?

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1   Steven Pilatowski
2   A.   They can borrow them, rent them
3 from the station.
4   Q.   The station being a FedEx
5 station where they're domiciled?
6   A.   Yeah. The facility where
7 they're domiciled.
8   Q.   I've used the word "domiciled."
9 Can you tell us what that means?
10   A.   It's just an acronym we use.
11 Like entity would be domiciled at Yonkers.
12 It's their home base. That's where their
13 contract is, and I would use the word
14 because that's where I am domiciled.
15   Q.   Was J & J domiciled at Yonkers?
16   A.   Yes, they were.
17   Q.   Do you know if J & J purchased
18 scanners?
19   A.   He said that Joe, III, said he
20 purchased scanners.
21   Q.   Did J & J rent scanners from
22 ground?
23   A.   Yes.
24   Q.   Do you know why J & J rented
25 scanners from ground?

31 (Pages 424 - 427)

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1   Steven Pilatowski
2   A.   Because they didn't have enough
3 scanners that day to go around to their
4 people, so he would rent them.
5   Q.   Are you familiar with the term
6 "hours of service"?
7   A.   Yes, sir.
8   Q.   Do you know what an hours of
9 service violation is?
10   A.   Yes, sir.
11   Q.   Can you explain to us what that
12 is?
13   A.   There's three types of hours of
14 service. There's a 10-hour hours of
15 service violation, which means that a
16 driver needs 10 hours of rest, continual
17 rest before he comes to work -- before he
18 logged on duty the next day.
19   Then there's a 14-hour
20 violation, which means that he's only
21 allowed to be on duty for 14 hours in a
22 day.
23   And then there's a 70-hour
24 violation, which means that a driver can
25 only be on duty 70 hours in an eight-day

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1   Steven Pilatowski
2 period.
3   Q.   Who keeps track of these
4 violations?
5   A.   The scanner logs -- when the
6 drivers log in and out of the scanners,
7 they track their hours of service and then
8 it is transmitted to the safety department.
9   Q.   Did you say the safety
10 department?
11   A.   The safety department, yes.
12   Q.   Is the AO or BC or the service
13 provider notified, as well?
14   A.   Yes. They would be notified as
15 soon as we're notified.
16   Q.   Is it important to know about
17 the hours of service issues for every
18 driver?
19   A.   Yes, it's a Department of
20 Transportation rule.
21   Q.   Is there anywhere -- are you
22 familiar with the agreement, the ISPA
23 agreement in general?
24   A.   I'm familiar with the
25 agreement, yes, sir.

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1   Steven Pilatowski
2   Q.   Is there anywhere in the
3 agreement that references hours of service?
4   A.   Yes, it would be Schedule I.
5   Q.   If there's -- if there are --
6 if drivers go above the threshold you
7 mentioned before, the 10, the 14 or the
8 70-hour threshold, would that -- it's a
9 violation of law; would it also be a
10 violation of the agreement?
11   A.   Yes.
12   Q.   And who is ultimately
13 responsible for hours of service, keeping
14 track of hours of service for the drivers?
15   A.   The AO or BC is responsible to
16 keep track of their drivers' available
17 hours of service.
18   MR. AYES: All right. Thank
19   you, Steve. I have no further
20   questions.
21 CROSS EXAMINATION
22 BY MR. ROTH:
23   Q.   Mr. Pilatowski, Richard Roth.
24 Can you hear me?
25   A.   Yes.

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1   Steven Pilatowski
2   Q.   Let's start with the hours of
3 service.
4   To your knowledge, was J & J
5 ever in violation of the hours of service
6 rule?
7   A.   I believe so. I can't tell you
8 exactly what date, but I believe they had
9 some violations.
10   Q.   A lot or a few?
11   A.   I don't know what a lot is.
12   Q.   You're in the business, I don't
13 either. Was it more than the norm?
14   A.   I think they had two or three,
15 possibly more.
16   Q.   So two or three or four over a
17 five-year time period?
18   MR. AYES: Objection.
19   A.   I've only known him for two
20 years.
21   Q.   So, you only got involved with
22 J & J starting when?
23   A.   When they arrived to Yonkers.
24   Q.   Which was when?
25   A.   I don't know the exact date

32 (Pages 428 - 431)

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 1          Steven Pilatowski
 2  they came to Yonkers.
 3     Q.  Do you know a year?  You work
 4  in Yonkers, I don't.  Approximately?
 5     A.  2021 of October possibly.
 6     Q.  So do I understand that you
 7  became the P -- what is it?  Pick-up and
 8  delivery manager for J & J starting October
 9  2021?
10        MR. AYES:  Objection.
11        THE WITNESS:  Can you repeat
12     the question?
13        MR. ROTH:  What's the
14     objection?
15        MR. AYES:  It's
16     mischaracterization of the testimony.
17     Q.  Let me explore it.  So, were
18  you the P and D?
19        ARBITRATOR:  Pick-up and
20     delivery.
21     Q.  Pick-up and delivery manager at
22  Yonkers prior to 2021?
23     A.  Yes, sir.
24     Q.  Okay.  And when did J & J come
25  to Yonkers?
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 1          Steven Pilatowski
 2     A.  I believe in either September
 3  or October of '21, '20.
 4     Q.  Well, there's a difference.
 5  You don't remember?
 6     A.  I don't remember.
 7     Q.  That's fine.
 8        But -- well, let me ask you
 9  this:  Was -- you know, do you not, that
10  J & J was no longer an independent
11  contractor as of June of 2022, correct?
12     A.  I believe so, yes.
13     Q.  So to your recollection was
14  J & J an independent contractor for
15  approximately ten months under you?  Or you
16  think it was a year, almost two years under
17  you?
18     A.  Probably almost two years, sir.
19  About two years.
20     Q.  You think it was about by
21  October 2020, ending in June '22; does that
22  make sense?
23     A.  Possibly, yes.  I don't have
24  the exact dates in front of me.
25     Q.  You don't know as you sit here
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 1          Steven Pilatowski
 2  if it was October '20 or October '21?
 3     A.  No, I don't.
 4     Q.  Now, in any event during that
 5  time period there were, I think four --
 6  three or four, you said, violations of
 7  hours of service?
 8     A.  Possibly.
 9     Q.  Possibly?
10     A.  Possibly.
11     Q.  You're not certain?
12     A.  I'm not certain.
13     Q.  Okay.  And you do know, though,
14  don't you, there are several instances
15  where J & J had to deliver and come back to
16  the facility and pick up more boxes and go
17  out and deliver again?
18     A.  Yes.
19     Q.  And, in fact, isn't it also
20  true that J & J's trucks never got out
21  until eleven or twelve o'clock on a daily
22  basis?
23     A.  That was by their choice.
24     Q.  By their choice, let's talk
25  about that.
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 1          Steven Pilatowski
 2     A.  Sure.
 3     Q.  So, your facility, how many
 4  different spots are there for trucks to be
 5  adjoined to the building?
 6     A.  How many trucks are in our
 7  building or how many load positions in the
 8  building?
 9     Q.  I'm sorry, I don't know the
10  lingo.  How many load positions are there?
11     A.  About maybe 80 to 85.
12     Q.  80 to 85 load positions.
13     A.  Approximately.
14     Q.  You said that J & J had four
15  trucks.  Are you aware that Conrod Newton
16  testified there were nine trucks?
17     A.  No.  I wasn't aware that he
18  testified they had nine trucks.
19     Q.  Are you aware they had nine
20  trucks?
21     A.  Does that include their
22  rentals?
23     Q.  The trucks that were being used
24  for service, rental or purchased that they
25  had nine out?
```

33 (Pages 432 - 435)

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1   Steven Pilatowski
2   A.   Okay. They had nine trucks.
3 Operational?
4   Q.   If you don't know, you don't
5 know. I am not here to answer your
6 questions. I'm just trying to get your
7 understanding.
8   You don't know if they had
9 four, six, eight or nine trucks operational
10 on any given day, correct?
11   A.   Correct.
12   Q.   Now, you said there were 80 to
13 85 load positions. How many of those 80 to
14 85 were with ground versus home?
15   A.   I'm not sure of the exact
16 number.
17   Q.   Is it half? Is it 10 percent?
18 Give me your best approximation.
19   A.   Like I said, I don't have the
20 exact number. I don't want to approximate.
21   Q.   Mr. Pilatowski, I am not asking
22 for the exact number. You're running the
23 facility. You can't tell me what
24 percentage or a range of what ground had in
25 load position?

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1   Steven Pilatowski
2   A.   About 50/50.
3   Q.   So 50 percent ground and 50
4 percent home; is that right?
5   A.   Yes.
6   Q.   And so do you know how many
7 trucks J & J had or were able to put in the
8 load position when it first came to
9 Yonkers?
10   A.   They were looking at
11 approximately four or five vehicles.
12   Q.   Do you know? Mr. McKenzie
13 testified initially they were only allowed
14 two load positions. Were you aware of
15 that?
16   A.   No, I wasn't aware of that.
17   Q.   Are you aware that Mr. McKenzie
18 testified both load positions were taken
19 away, and they had no load positions?
20   A.   I wasn't aware of that.
21   MR. AYES: Objection.
22   Q.   Are you aware --
23   ARBITRATOR: Hold on. He has
24   an objection.
25   MR. AYES: The objection is,

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1   Steven Pilatowski
2   are you asking if he's aware of the
3   testimony that Mr. McKenzie gave? Or
4   are you asking him if he is aware of
5   the substantive nature of the
6   testimony?
7   MR. ROTH: I asked if he's
8   aware of the testimony, and he said
9   he wasn't aware. Now we move on.
10   Q.   Are you aware that, in fact,
11 J & J ended up going from two load
12 positions to zero?
13   A.   No.
14   Q.   Do you know --
15   ARBITRATOR: You have to
16   rephrase that question.
17   MR. ROTH: I'm not asking
18   testimony. I moved on. I am with
19   you.
20   Q.   Do you know if there was ever a
21 time where J & J had no load positions for
22 the trucks?
23   A.   Yes.
24   Q.   And was there a time that J & J
25 had no load positions for the truck?

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1   Steven Pilatowski
2   A.   Yes.
3   Q.   Okay. And by having no load
4 positions, that meant that they had to put
5 everything on manually, correct?
6   A.   Their packages were loaded on
7 carts and they loaded their own trucks.
8   Q.   Right. If it's a load
9 position, is there a conveyer there? How
10 does that work?
11   A.   Yes, there's a conveyer on the
12 dock.
13   Q.   Okay. So let me see if I
14 understand it. If you're in load position,
15 you're able to utilize a conveyer, correct?
16   A.   For ground, yes, sir.
17   Q.   For home?
18   A.   Home, it was a static roller
19 that was connected to the dock that the
20 packages came down on a static roller. The
21 conveyer system is for the ground.
22   Q.   My lingo may not be right.
23   My analogy, Mr. Pilatowski, is
24 sort of like when you pick up your luggage
25 from the airport. Is that what happened

34 (Pages 436 - 439)

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```
 1          Steven Pilatowski
 2 with home; that the -- it would roll and
 3 then you would pick it up and put it on the
 4 truck?
 5    A.   For ground, yes, sir.
 6    Q.   How about for home?
 7    A.   No.
 8    Q.   How did home work?
 9    A.   It came down.  It was split and
10 it came down, like I said, the static
11 roller.  And the package handler would put
12 packages on a platform or in a cart.
13    Q.   If that was -- was that where
14 the home trucks had load position?
15    A.   Yes.
16    Q.   And if a truck did not have
17 load position, there would be no static
18 roller, correct?
19    A.   No.  It was loaded in another
20 part of the building on another static on
21 another roller, and they would cart over to
22 them.  It would be brought over to them
23 after the sort ended.
24    Q.   Are you aware that J & J
25 actually manually loaded all of its trucks
```

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 1          Steven Pilatowski
 2 without any kind of assistance?
 3    A.   Yes.
 4    Q.   So you know, then.
 5         And you know, do you not, that
 6 J & J complained to either you or Mike
 7 Scherer about the fact that it had to
 8 manually load all of its trucks?
 9    A.   Yes, they were HD.  HD loads
10 their own.
11    Q.   All HD loads its own trucks?
12    A.   Yes.
13    Q.   So no HD -- when HD is in load
14 position, does it not utilize any conveyer
15 system?
16    A.   No.  It would -- came down on a
17 static roller.  The packages were put on a
18 platform, and then they would take the
19 packages off the platform or the carts and
20 they would put them on their trucks.
21    Q.   What's a static roller?  What
22 does that mean?
23    A.   A nonmotorized roller.  It's
24 just a -- just rollers.
25    Q.   Like on a pallet?
```

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 1          Steven Pilatowski
 2    A.   No, it's not pallet.  It's a
 3 roller.  It's a metal piece that's
 4 connected to the dock, lower level and it's
 5 nonmotorized.  The packages would be
 6 manually pushed down the rollers.
 7    Q.   Is it fair to say that when
 8 your truck was up against the loading dock,
 9 you could push the boxes onto the rollers
10 and then lift them onto the trucks,
11 correct?
12    A.   No.  Package handlers handle
13 the packages and put them on the platforms,
14 and then the driver or the helper would put
15 them into their trucks.  They scan the
16 packages onto their platform.
17    Q.   Let me say it differently.  If
18 you had a loading position, someone would
19 put the box on this roller and then they
20 would be loaded onto the trucks, correct?
21    A.   The packages would be sent down
22 the rollers and the package handler would
23 pick up the boxes off the rollers and place
24 them on either a cart or a platform.
25    Q.   Okay.  And when you didn't have
```

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 1          Steven Pilatowski
 2 load positions --
 3         MR. AYES:  Can we just make
 4    sure the entire was --
 5    Q.   When a truck didn't have load
 6 position, they were unable to use these
 7 rollers, correct?
 8    A.   No.  They didn't have -- they
 9 need the rollers.  They were already -- the
10 packages were already scanned and put in a
11 cart, and then they would be brought to
12 their trucks.
13    Q.   So it would all be done
14 manually if you weren't in load position,
15 correct?
16    A.   Yes.
17    Q.   Okay.  And do I understand it
18 was 50/50 ground and home for the loading
19 docks, then -- and you had 80 to 85 spaces,
20 then approximately 40 spaces -- 40 to 42 --
21 no.  42 to 43 spaces in the loading dock
22 would be for home, correct?
23    A.   Yes.
24    Q.   And you agree there was a time
25 J & J had zero of those loading spaces?
```

35 (Pages 440 - 443)

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Steven Pilatowski

2 A. Yes.
3 Q. Okay. Got that.
4   Now, you said that you would
5 liked to have Joe come to the station more
6 often, correct?
7 A. Correct.
8 Q. But that was just your desire.
9 There was no obligation to come, correct?
10 A. I would like to talk to Joe in
11 person and then to sit down with him and
12 show him the operation and to help him
13 along.
14 Q. I understand that. But you
15 could pick up the phone and talk to Joe,
16 correct?
17 A. Yeah.
18 Q. And you did that, correct?
19 A. Correct.
20 Q. Okay. Do I understand over the
21 years of '20, '21, '22, you never met Joe,
22 Sr., Joe's father?
23 A. I never met Joe, Sr.
24 Q. Now, you said that the boxes
25 came in -- I think you said when boxes came

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Steven Pilatowski

2 in, they were cut between ZIP codes.
3   Do you remember that testimony?
4 A. Yes, sir.
5 Q. Are you aware of whether the
6 J & J boxes were cut between ZIP codes or
7 if they were all thrown in together?
8 A. I don't understand "thrown in
9 together." What --
10 Q. I just had someone this morning
11 testify that they were not. They were all
12 thrown together and they had to separate
13 them.
14   Are you aware as to whether the
15 J & J boxes were cut by ZIP code, or
16 whether they were put in cages together?
17 A. Joe separated his boxes through
18 the DRO system. Whether they were thrown
19 together or moved around between his
20 different work areas amongst his drivers,
21 that's another thing. But they were all
22 cut according to how he wanted the packages
23 to drop on the work areas.
24 Q. That's not what I am asking.
25   Are you aware when they came

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Steven Pilatowski

2 into J & J, they were not -- well, let me
3 ask you this question: When packages came
4 into the home delivery independent
5 contractor, were they, prior to coming in,
6 divided by ZIP code?
7 A. Yeah. He serviced a certain
8 ZIP code, so he would get the packages for
9 that ZIP code.
10 Q. Were the ones that he had
11 divided within his territory by ZIP code,
12 or were they all put together?
13 A. Well, he divided his packages
14 in the ZIP code.
15 Q. That's not my question.
16   Are you saying that if, for
17 example, J & J had 10035, 10027, that would
18 all be put together prior to his people
19 putting it on trucks?
20 A. Yeah. They would -- he would
21 already know what packages are going on his
22 trucks. He would already predetermine
23 that.
24 Q. I am being inartful, let me try
25 again.

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Steven Pilatowski

2   Are you saying that the boxes
3 before going to the service provider were
4 all divided by ZIP code within one service
5 provider's area? In other words, if I have
6 five zip codes, did the boxes come into me
7 in five different piles or were they all
8 put together?
9 A. Well, they wouldn't be all
10 mixed up. They would be sorted through how
11 he wanted the packages to be -- to go to
12 the work areas. He would separate. So if
13 one person did 125th Street, that truck
14 would do 125th Street. He would set that
15 on his DRO. They wouldn't be mixed up with
16 the three sevens and the two sixes. They
17 wouldn't just all be meshed in together.
18 Q. Now, there's testimony by both
19 Kevin -- by the way, is it Andrew McKenzie
20 or Kevin McKenzie?
21 A. McKenzie. Andrew McKenzie.
22 Q. There's testimony from McKenzie
23 and from Newton that they had to take the
24 boxes manually and because they didn't have
25 anything in the station or on the loading

36 (Pages 444 - 447)

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 1         Steven Pilatowski
 2 docks, they had to actually move the boxes
 3 from the cages, take them outdoors and put
 4 them in the trucks manually.
 5         Are you aware of that?
 6     A.   If they wanted to take the
 7 packages outside, that was their
 8 prerogative.  Nobody forced them.
 9     Q.   That's not my question.
10         Are you aware that the trucks
11 were outside and were not allowed in?
12     A.   The trucks were always allowed
13 in.  They weren't forbidden not to come
14 into the building.
15     Q.   Are you aware Conrod Newton
16 complained to Mr. Scherer, I think he said
17 on a weekly or daily basis about the labor
18 that was involved in order to load the
19 trucks?
20     A.   No, I wasn't aware of that.
21     Q.   So Mr. Scherer never told you
22 anything about that?
23     A.   I was not aware that Conrod
24 complained to Mr. Scherer.
25     Q.   And not only did he complain to
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 1         Steven Pilatowski
 2 Mr. Scherer, Mr. Scherer said he would fix
 3 it, but it was never fixed.
 4         That never came to your
 5 attention?
 6     A.   No.
 7     Q.   And wouldn't that be something
 8 that would come to your attention as the
 9 pick-up and delivery person?
10     A.   Yeah.  He would -- Joe
11 mentioned it to me too and Conrod mentioned
12 it to me.
13     Q.   Conrod mentioned it to you.
14 What did you say to him?
15     A.   I said I don't have any
16 positions available right at this moment.
17     Q.   What did they say to you?
18     A.   Can we get a load position?  I
19 said, I don't have one available.
20     Q.   So, is it fair to say of the
21 42, 43 load positions that you gave to home
22 delivery during your entire tenure while
23 J & J was there, there were no load
24 positions available?
25     A.   Not in the beginning, but they
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 1         Steven Pilatowski
 2 got load positions the last year they were
 3 there.
 4     Q.   When did they get load
 5 positions?
 6     A.   The last year they were there.
 7     Q.   How many positions did they
 8 get?
 9     A.   I believe they got five load
10 positions.
11     Q.   So if Mr. Newton and
12 Mr. McKenzie said they didn't have any,
13 you'd say they're mistaken?
14     A.   In the beginning.  Conrod was
15 only there for a year.  He left J & J.
16     Q.   Conrod left J & J when?
17     A.   After the first year they were
18 there.
19     Q.   It's hard because you don't
20 remember the year, but you're saying if you
21 started in October '20, you're saying
22 Conrod was gone by October '21?
23     A.   He was only there for a year.
24     Q.   And what about Mr. McKenzie?
25 How long was he there for?
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 1         Steven Pilatowski
 2     A.   I'm not sure the exact
 3 timeframe he was there.  He was there
 4 for --
 5     Q.   I'm sorry I interrupted you.
 6 Go ahead.
 7     A.   He wasn't a driver.
 8     Q.   He was a helper, right?
 9     A.   He helped on the trucks.  He
10 wasn't a qualified driver.
11     Q.   Do helpers get drug tested or
12 just drivers?
13     A.   Drivers.
14     Q.   So drivers get drug tested and
15 Mr. McKenzie wasn't a driver, correct?
16     A.   Correct.
17     Q.   Do you know whether
18 Mr. McKenzie got drug tested?
19     A.   I was aware that he got drug
20 tested.  I wasn't there when he got drug
21 tested.  I was on leave or vacation at the
22 time.
23     Q.   And are you aware that they
24 prohibited him from coming onto the
25 premises?
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37 (Pages 448 - 451)

Page 452

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 1        Steven Pilatowski
 2    A.   I was not aware.
 3    Q.   Are you aware that six months
 4  later, they told him he could come back in?
 5    A.   I wasn't aware of that, no.
 6    Q.   But to your knowledge, only
 7  drivers get drug tested with drugs,
 8  correct?
 9    A.   Correct.
10    Q.   What was the volume to your
11  recollection of J & J?
12    A.   Excuse me again, what was the
13  question?
14    Q.   What was the volume, either
15  daily or weekly, if you recall, of J & J,
16  volume of boxes?
17    A.   It varied day-to-day and weekly
18  and the time of month it was.
19    Q.   Give me the range, if you
20  could.
21    A.   Maybe 800, 800 packages per day
22  maybe.
23    Q.   Okay.  And --
24    A.   Maybe less.
25    Q.   I'm sorry?
```

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 1        Steven Pilatowski
 2    A.   Maybe less given the time of
 3  month.  There are peak seasons that would
 4  increase.  You know, it varied from month
 5  to month.
 6    Q.   Was it one of the smaller
 7  independent contractors, that is by
 8  delivery?
 9    A.   Yes.
10    Q.   The independent contractor that
11  had the most deliveries on a daily basis,
12  how much -- what was the size of that
13  delivery?
14    A.   Stops or packages?  Which one?
15    Q.   Packages.
16    A.   Probably about 3,000.
17    Q.   Okay.  Business discussion,
18  let's talk about that for a second.  Do I
19  understand business discussions are an
20  internal record at FedEx?
21    A.   Yes.
22    Q.   And they are not signed by the
23  independent contractors or their business
24  contacts?
25    A.   Correct.
```

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 1        Steven Pilatowski
 2    Q.   And they're not even provided
 3  to the business contact or the independent
 4  contractors, the AOs?
 5    A.   I never gave a copy of a
 6  business discussion to an AO or a BC.
 7    Q.   So would it be the case, then,
 8  that if you have a discussion with, let's
 9  say Conrod, about somebody saying that they
10  didn't get their package, you would have an
11  obligation to list that as a business
12  discussion, but Conrod wouldn't get a copy
13  of that, correct?
14    A.   Correct.
15    Q.   And Conrod wouldn't even know
16  it's, quote, a business discussion.  You
17  would just talk to him about it, correct?
18    A.   Well, I would like to do -- I
19  would do a business discussion in private
20  in my office.  And if I couldn't do it in
21  person, I would do it over the phone with
22  Joe.  It wouldn't be a business discussion
23  out in public on the loading dock.
24    Q.   I understand that.  I'm sorry,
25  it was an inartful question.
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 1        Steven Pilatowski
 2        My question is:  You can have a
 3  discussion with Joe or Conrod about some
 4  kind of service issue, but you don't
 5  necessarily label it a business discussion.
 6  In other words, you don't say -- do you
 7  say, Joe, we need to have a business
 8  discussion?  Or do you say, Joe, let's talk
 9  about the failure delivery of a box in some
10  location?
11    A.   No.  Business discussion is a
12  serious matter I would have with the
13  individual.  It's not a random thing you
14  throw out there.  It's a serious documented
15  discussion detailing service or safety
16  issues.
17    Q.   Right.  Documented by you, but
18  not provided to them, correct?
19    A.   Correct.
20    Q.   And Mike Scherer, was his role
21  sort of -- was his role the liaison between
22  the independent contractors and FedEx,
23  essentially?
24    A.   Yes.
25    Q.   So, was he the guy that the AOs
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38 (Pages 452 - 455)

Page 456

Steven Pilatowski

1
2 or the independent contractors would go to
3 and rely on when they had issues with
4 FedEx?
5   A.   Yes.
6   Q.   You were asked about a
7 conversation that was spoken about earlier
8 where you talked to somebody about maybe
9 making more money with another independent
10 contractor. Remember that? You were just
11 asked that by your lawyer?
12   A.   Yes, I recall.
13   Q.   And is it the case that you
14 don't recall ever having a conversation
15 with a driver about maybe making more money
16 with a different independent contractor?
17   A.   I never had that conversation
18 with a driver.
19   Q.   Are you aware as to whether
20 anyone else at FedEx had a conversation
21 with a driver to tell them they could make
22 more money with other independent
23 contractors?
24   A.   No.
25   Q.   Okay. I think you had talked

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Steven Pilatowski

1
2 about -- you were asked about packages
3 being pulled from J & J for failure
4 delivery?
5   A.   Yes.
6   Q.   How often did that happen?
7   A.   It happened for at least almost
8 two months during J & J's last peak season
9 with us. He did not have -- it was the
10 last year and the last peak that he had at
11 FedEx and our station where he didn't
12 have --
13   Q.   I apologize, I did it again.
14 Go ahead. He didn't have enough?
15   A.   Drivers or vehicles to service
16 his work areas.
17   Q.   When was peak season?
18   A.   We consider peak the last two
19 weeks of October, November and right
20 through December.
21   Q.   Let me see if I understand it.
22 Are you saying starting the last two weeks
23 of November through December; is that what
24 you're saying?
25   A.   No. Starting the last two

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Steven Pilatowski

1
2 weeks of October into November and then
3 December.
4   Q.   Okay. So that whole time
5 period?
6   A.   Yeah.
7   Q.   Was that the only time packages
8 were pulled from J & J?
9   A.   Yes. It was called contingency
10 because he couldn't service his work area.
11 He didn't have enough people to provide
12 service.
13   Q.   Did you tell him beforehand
14 that you were pulling?
15   A.   Yes.
16   Q.   And did he say -- and did Joe
17 say okay?
18   A.   He couldn't provide any drivers
19 or extra trucks so he went along with it.
20   Q.   We talked about overlapping.
21 Do you know who Shawn Ponds is?
22   A.   No.
23   Q.   You don't know who Shawn Ponds
24 is. So overlapping is where, I understand,
25 where ground and home -- there's the same

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Steven Pilatowski

1
2 provider for ground and home service,
3 correct?
4   A.   Correct.
5   Q.   Is that preferred at FedEx that
6 you will have someone doing both?
7   A.   It is preferred, yes.
8   Q.   Why is that preferred?
9   A.   It's more -- I think it's more
10 efficient, and this way the drivers -- the
11 entities are not -- they know exactly where
12 the boundaries are, the streets. There's
13 no two people, two different entities on
14 the same street, the same block delivering
15 packages.
16   Q.   Okay. And did you say you
17 had -- how many different home service
18 providers did you have?
19   A.   Pure home entities or
20 overlapped entities?
21   Q.   I'm sorry, pure home entities.
22   A.   About four or five.
23   Q.   Four or five pure home?
24   A.   Yes.
25   Q.   And are you aware -- you do

39 (Pages 456 - 459)

Page 460

        Steven Pilatowski
1
2 know that there came a day when J & J was
3 no longer a service provider, correct?
4   A.   Yes.
5   Q.   And let me just tell you that
6 was on or about June 10th, 2022. Okay?
7   A.   I don't know the exact, exact
8 date, but I do know that it came to an end.
9   Q.   Are you aware that, in fact,
10 boxes were being sent -- instead of to
11 Yonkers, to Brooklyn that were for the Zip
12 codes that J & J was before June 10th?
13   A.   I don't know about before June
14 10th, but if that was their deadline, yes,
15 packages were sent to another station to be
16 serviced by another entity.
17   Q.   I understand that. My question
18 is: Are you aware that, in fact, before
19 June 10th, some of the packages that would
20 have gone to Yonkers for J & J went to
21 Brooklyn for the same ZIP code in
22 anticipation of June 10th?
23   A.   I was not aware of that.
24   MR. ROTH: Okay. I have no
25   further questions. Thank you.

Page 461

1   Steven Pilatowski
2 REDIRECT EXAMINATION
3 BY MR. AYES:
4   Q.   Hey, Steve, just a couple of
5 questions based on what Mr. Roth just asked
6 you.
7   We were talking about Conrod
8 Newton and when he was an employee at the
9 station. Do you know the entity ULUG?
10   A.   No, I am not familiar with
11 them.
12   Q.   Do you know that Conrod left
13 employment with J & J at some point?
14   A.   Yes, I do.
15   Q.   And was Conrod at the station
16 to your knowledge after he left employment
17 with J & J?
18   A.   I didn't see Conrod after he
19 left J & J at the station.
20   Q.   I know you said that the first
21 year, J & J may not have had load
22 positions, correct?
23   A.   That's correct.
24   Q.   And so is it possible that some
25 time after Conrod left, J & J could have

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1   Steven Pilatowski
2 gotten those load positions?
3   A.   After Conrod left, eventually
4 J & J did get load positions.
5   Q.   And we talked about
6 Mr. McKenzie getting a drug test. And he
7 was a helper, right?
8   A.   Right.
9   Q.   If there is a complaint against
10 a helper, can there be a drug test issued?
11   A.   I'm not aware of that -- of
12 that helper getting drug tested.
13   Q.   You're not aware of that, of
14 Mr. McKenzie you're talking about?
15   A.   Yeah, I did not know that he
16 got drug tested. I wasn't there at the
17 station. I was on leave or on vacation at
18 the time, and I don't know the
19 circumstances around that.
20   Q.   My question is, generally
21 speaking, if there's a complaint against a
22 helper related to drugs, is the helper able
23 to get drug tested?
24   MR. ROTH: Is he able to?
25   ARBITRATOR: Able?

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1   Steven Pilatowski
2   Q.   I'll rephrase the question.
3   If there's a complaint lodged
4 against the helper for an issue regarding
5 drugs, can FedEx Ground ask the helper to
6 get drug tested?
7   A.   I'm not aware of that policy,
8 I'm sorry.
9   Q.   At the business discussions
10 meetings, is there anything that's
11 preventing the AO or BC from taking their
12 own notes?
13   A.   No.
14   Q.   Or maintaining their own
15 records?
16   A.   No.
17   Q.   I think we talked a little bit
18 about -- Mr. Roth asked you questions about
19 packages that were being removed from
20 J & J. Do you remember that?
21   A.   Yeah.
22   Q.   Do you know what Schedule K of
23 the agreement is?
24   A.   I do, but I don't know it
25 verbatim.

40 (Pages 460 - 463)

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1   Steven Pilatowski
2   Q.   Do you know what it refers to?
3   A.   Moneys received for peak
4 season.
5   Q.   Does Schedule K outline
6 circumstances that the contractor has to
7 follow during peak season?
8   A.   Yes.
9   Q.   We also talked about packages
10 being cut, and Mr. Roth asked you some
11 questions about that.
12   Does the AO control how the
13 packages are assigned to his route?
14   A.   AO has 100 percent control over
15 how the packages are assigned to his route.
16   Q.   In this case Joe as the AO
17 would have had the control over how
18 packages are assigned; is that right?
19   (Whereupon, an off-the-record
20   discussion was held.)
21   A.   That is correct.
22   MR. AYES: Nothing further from
23   me.
24 RECROSS EXAMINATION
25 GbY MR. ROTH:

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1   Steven Pilatowski
2   Q.   Let me just ask one math
3 question, I'm fiddling with numbers. There
4 are 80 to 85 load positions, correct?
5   A.   Approximately, yeah.
6   Q.   Okay. And 50 percent are for
7 home and 50 percent are for ground,
8 correct?
9   A.   Yes.
10   Q.   And there's only four to five
11 home -- only home delivery companies,
12 independent contractors at Yonkers,
13 correct?
14   A.   Yeah. Approximately four to
15 five or three to four.
16   Q.   So does that mean 42 trucks got
17 loading -- there's a point in time where 42
18 trucks of the three or four home, only
19 independent contractors got loading docks
20 and J & J didn't have one of those 42?
21   A.   They didn't have a load
22 position, no.
23   Q.   Okay.
24   MR. ROTH: I have no further
25   questions. Thank you.

Page 466

1   Steven Pilatowski
2   MR. AYES: Thanks, Steve.
3   MR. ROTH: Thank you,
4 Mr. Pilatowski. Go enjoy your
5 vacation.
6   THE WITNESS: Thank you, sir.
7   (Whereupon, a short break was
8 taken at this time.)
9   XXXX
10
11
12
13
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25

Page 467

1   Christopher Messina
2   ARBITRATOR: Okay.
3 Mr. Messina, would you please raise
4 your right hand.
5   Do you promise to tell the
6 truth, the whole truth and nothing
7 but the truth?
8   THE WITNESS: Yes.
9 C H R I S T O P H E R M E S S I N A,
10   called as a witness, having been
11   first duly sworn by a Notary Public
12   of the State of New York, was
13   examined and testified as follows:
14   ARBITRATOR: Now spell your
15   name for the stenographer.
16   THE WITNESS: First name
17   Christopher, C-H-R-I-S-T-O-P-H-E-R.
18   Last name Messina, M-E-S-S-I-N-A.
19   MR. DEL BOVE: Do you have a
20   middle name?
21   THE WITNESS: Paul.
22 DIRECT EXAMINATION
23 BY MR. ROTH:
24   Q.   Mr. Messina, tell us if you
25 would your educational background.

41 (Pages 464 - 467)

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Christopher Messina

1
2   A.   I went to William Patterson
3 College in Wayne, New Jersey. Studied
4 communications and business finance.
5   Q.   Okay. And after college you
6 started working?
7   A.   Yeah. I started at Ecolab for
8 the first four years or so and after that,
9 I got into finance and started in the
10 mortgage business.
11   Q.   And give me approximately what
12 year.
13   A.   1991 probably -- '95, I started
14 doing mortgages.
15   Q.   Who did you work for in 1995?
16   A.   I started off with First
17 Laridian Mortgage. We shared licenses with
18 him. So I was still an independent.
19   I then merged with Homestar
20 Mortgage, and Homestar Mortgage Services
21 out of Paramus, New Jersey. And I stayed
22 with them up until 2008, as a matter of
23 fact.
24   Q.   What did you do after 2008?
25   A.   Before -- you know, I saw the

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Christopher Messina

1
2 implode coming. I saw some stuff
3 happening. During my managing of my
4 offices, I would focus on difficult to
5 finance loans, so I met a lot of high net
6 worth individuals and hedge funds and
7 whatnot.
8   So, my career kind of ventured
9 off into doing more commercial finance and
10 I did hard money lending and difficult to
11 finance loans.
12   Q.   What years was that, from when
13 to when?
14   A.   From 2008 when I got out to
15 current.
16   Q.   So you have relationships with
17 a lot of high net worth individuals?
18   A.   Yes.
19   Q.   And is there anything about
20 your employment that we missed or is that
21 it?
22   A.   Well, I often get involved
23 with -- you know, when companies come and
24 they need help restructuring, I'll get
25 involved with that. I'll sometimes try to

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Christopher Messina

1
2 raise capital for them.
3   What I ended up doing was I got
4 into the PP&E industry for -- I am still
5 kind of in it at this point, waiting for
6 the final contracts to get funded. That's
7 kind of what's thrown me off because it's
8 taking way too long, but I got involved
9 with that. When that wraps up, I'll be
10 moving onto a skin project.
11   Q.   What skin?
12   A.   It's going to be the
13 rejuvenation -- it's going to be the
14 replacement of skin grafting. It's too
15 much to get into, but it's fascinating.
16   Q.   Let's talk about the facts of
17 this case. Did there come a time where you
18 heard of or met Joe Ruggiero?
19   A.   Yes.
20   Q.   Tell us how that happened.
21   A.   There was this guy Kevin who
22 was always at this person's house, and he
23 was telling me about this guy Joe and he's
24 going to be selling his FedEx route. He
25 heard me on the phone all the time because

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Christopher Messina

1
2 I am constantly on the phone; it's my life.
3   And he just kind of mentioned
4 the fact that you guys should get together,
5 and one thing led to another and we finally
6 got together over at his place. That's
7 kind of how this whole relationship
8 started.
9   Q.   Approximately, when was that?
10   A.   This was March, I think.
11   Q.   Of 2022?
12   A.   Yeah.
13   Q.   Okay. And did you -- tell us
14 about your first conversations with Joe.
15   A.   My first conversations with him
16 was that, you know, I was kind of -- I
17 thought I was wasting my time because he
18 said he pretty much had it done and it was
19 sold. And the numbers he was asking for
20 were, you know, pretty aggressive, but he
21 was very confident it was a done deal.
22   So I said okay. Well, let me
23 know if it becomes available. At this
24 point, good luck. You know, good luck to
25 you.

42 (Pages 468 - 471)

Page 472

1 Christopher Messina
2 Q. Did you know who that sale was
3 to?
4 A. No. He mentioned it, but it
5 was people in the game.
6 Q. Would the name Shawn Ponds
7 sound familiar?
8 A. No, it was a while ago.
9 Q. He said it was sold. You said,
10 let me know if it falls through?
11 A. Yes.
12 Q. And that was in March or so.
13 Tell us what happened next.
14 A. Well, this guy Kevin was kind
15 of our common denominator. And he had
16 mentioned -- and I said, What's going on
17 with Joe? Did he sell it? Is it done? He
18 said, No, I don't think so.
19 So, I reached out to see what
20 was happening because I was intrigued by it
21 because a couple of my partners, one of
22 them owns an Amazon route out in Florida
23 and he likes it a lot. He expanded it. He
24 says it's very turnkey. It's kind of
25 self-ran.

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1 Christopher Messina
2 So the due diligence on it was
3 simple and the numbers worked. He was
4 asking for an aggressive price, but the
5 territory was -- you know, it was a great
6 location, Manhattan. Manhattan is
7 Manhattan.
8 Q. When approximately were these
9 next conversations after you learned it
10 fell through?
11 A. I guess it was maybe three or
12 four months.
13 Q. Was it May?
14 A. I guess it was May.
15 Q. Of '22? Okay.
16 And tell us about -- let's
17 focus on your conversations about the
18 price. What did he want? What did you
19 offer? How did you come up with the
20 number?
21 A. First I came in lower than his
22 offer on the table just because I was ready
23 to go and they were still talking. Then I
24 brought it down to what the sales were, but
25 he did say that his couple of routes were

Page 474

1 Christopher Messina
2 taken from him, some stops were taken from
3 him. And it showed on the balance sheet,
4 it showed on the revenue that they were
5 dropped for about eight months or so, I
6 want to say.
7 But part of the agreement in
8 the sale was that FedEx was going to add
9 those drops back in so the numbers would go
10 back up to that 1.88 million.
11 Q. Well, you said 1.88 million --
12 well, first, before we get to the 1.88
13 million.
14 Did Mr. Ruggiero show you --
15 you mentioned balance sheets, financial
16 statements, tax returns, 1099s?
17 A. Yeah. We went through them
18 together. I didn't leave with them
19 until -- I just actually sent them down.
20 Once we knew we were going forward, he
21 e-mailed me a set. And I sent them to my
22 guy Rob. He's the Amazon guy down in
23 Florida.
24 Q. And what did you -- you said
25 you mentioned 1.88 million. How did

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1 Christopher Messina
2 that -- was that a number agreed on?
3 A. We agreed on that number.
4 Q. How was that reached?
5 A. Because the number at 1.5 came
6 in for -- where he landed and then if you
7 do the add back of the stops, it came out
8 to 1.88. And if we did the one and a half
9 times, I think he said it was 2.5 million.
10 So we just did the add on of the drops
11 going back in.
12 Q. Did you believe that one and a
13 half times revenue was a typical multiple
14 for these routes?
15 A. I think so.
16 Q. Did you learn that from the
17 Amazon guy, Rob?
18 A. Yeah. He said it was an easy
19 underwrite.
20 Q. So did you agree on 1.88
21 million?
22 A. I did. I had some struggle
23 with the guy, you know, with not one but
24 two partners. But the attractive thing to
25 this was that Joe was going to stay on for

43 (Pages 472 - 475)

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1   Christopher Messina
2 as long as we needed him to kind of handle
3 anything and transition any hiccups that we
4 had and keep everything smoothly operating.
5   That was one of the attractive
6 things. And, of course, he would hold
7 paper, if need be.
8   Q.   And tell us, did you meet with
9 Joe after you learned that his other sale
10 fell through?
11   A.   Yes.
12   Q.   How many times?
13   A.   We met a couple of times. The
14 one time was taking a ride and seeing the
15 territory, seeing the routes. We saw
16 Columbus.
17   Q.   Columbia University?
18   A.   Columbia University. And then
19 we saw 125th Street. Those were the two we
20 went on and headed back over.
21   Q.   Did he show you the terminal?
22   A.   I didn't go into the terminal.
23   Q.   And so one of the meetings you
24 said he took you on the routes. Did you
25 meet him a second time?

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1   Christopher Messina
2   A.   Not at the location.
3   Q.   Did you meet him in New Jersey?
4   A.   Yeah. We met -- his condo
5 wasn't too far from where I am at.
6   Q.   And after you discussed and
7 agreed on price, what did you anticipate to
8 happen next?
9   A.   I heard we were supposed to --
10 I heard FedEx doesn't get involved with the
11 sale too much. It was pretty much between
12 the entities that were coming in, so it
13 was -- the contractors worked it out
14 amongst themselves. But they had to meet
15 the new contractor, and that was one of the
16 requirements.
17   We were eager to move it along,
18 so I just kind of kept saying, When are we
19 doing this? He said he was trying to get
20 ahold of him and he was trying to get a day
21 and set it up for an onsite where I would
22 meet these guys and that day never came.
23   Q.   Did you learn from Mr. Ruggiero
24 he was having difficulty getting the FedEx
25 people to meet with him?

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1   Christopher Messina
2   A.   Yeah, that was the key of the
3 frustration. And then I started to get
4 frustrated myself because my guys are
5 waiting and my Amazon guys busted my chops
6 a little bit about, What are you doing
7 getting into this business? You know,
8 going to commercial finance buildings to
9 your real estate.
10   But I pushed for this and then
11 we couldn't get it done. We couldn't get
12 in there, which was frustrating. And Joe
13 just kept saying he's trying, he's trying.
14   And he did say he had to get an
15 extension a couple of times. He said that
16 wasn't all his problem, it was kind of a
17 problem with the sellers -- I mean with the
18 buyers and problem with FedEx-something.
19   Q.   And did there come a time where
20 either you or Joe said, let's just go there
21 and meet him because they won't answer?
22   A.   Yeah. It was right towards the
23 expiration of the last extension.
24   Q.   How did it happen that you
25 decided to get in the car and go meet him?

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1   Christopher Messina
2   A.   Joe -- I had given him the RFI
3 and I filled it out, most of it, and then I
4 had to get something signed by my guy in
5 Florida. It was -- I think it was the last
6 day, couple of days before the expiration
7 of the final contract.
8   (Whereupon, the requested
9   portion of the transcript was read
10   back by the reporter.)
11   Q.   So, let me stop you there. You
12 said RFI. Did you understand that an RFI
13 had to be presented to FedEx?
14   A.   Yeah, I understood it. They
15 wanted to get an overview and snapshot of
16 what the new contractor was going to be
17 that he agreed to go into business with.
18   Q.   Had you prepared that well in
19 advance of the last day of the contract?
20   A.   Yeah. I had put it together --
21 when we knew that -- when Joe was telling
22 me he was serious, we still haven't had a
23 date to go in to meet everybody. And he
24 said no, I have this thing, we're going to
25 meet. You know, I've gotten these guys.

44 (Pages 476 - 479)

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 1          Christopher Messina
 2   Trust me, we're going to make it happen.
 3   We're going to get it done.  He was eager
 4   to get it done.
 5          So at that point I had given it
 6   to him.  And everything in there was fresh
 7   enough, not too much time went by, so I
 8   didn't have to refresh anything I thought
 9   was important.
10      Q.   So did there come a time where
11   you -- either you or Joe said, well, if
12   they're not answering my call or not
13   answering my text, let's just go there?
14      A.   Yeah.  That was the day he and
15   I were in the truck and heading over, but
16   he didn't tell me that.  He told me he had
17   an appointment.
18      Q.   Oh, he told you he had an
19   appointment?
20      A.   Yeah.  Well, he led --
21      ARBITRATOR:  Led you to
22    believe.
23      THE WITNESS:  Right.
24      A.   He didn't tell me we were going
25   in a hundred percent blind.  I knew it was
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 1          Christopher Messina
 2   the final day and I knew this was it.  I
 3   kind of referenced, you know, talk about
 4   last minute.  This is a barn-burner kind of
 5   thing.
 6      Q.   So tell us about that day.  Let
 7   me just tell you it was June 10th, 2022.
 8      A.   Okay.
 9      Q.   Tell us about that day.
10      A.   We just came out of the tunnel
11   and Joe had called -- he called his guys at
12   FedEx and said we're on our way.  We were
13   on the phone with the attorneys, and Joe
14   wanted to get this contract.  He wanted the
15   contract done and signed.  He wanted to get
16   it notarized.  He kept racing around
17   talking about the notary, which wasn't
18   really that significant but he wanted to do
19   it to show these guys that he was serious
20   and we were doing it.
21          He finally got on the phone
22   with one of them, I don't remember who.
23   There were two guys we spoke to on that
24   call.
25      Q.   Let me just give you a history
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 1          Christopher Messina
 2   if it helps.  There's a Mike Scherer and
 3   David Poindexter.
 4      MR. DEL BOVE:  Objection.
 5      MR. ROTH:  He said he didn't
 6    remember the names.
 7      A.   I know it was two guys.  I
 8   remember Mike.  And the first guy, I know
 9   they talked a lot about his father.  He was
10   genuinely sorry about his dad, you know.
11      Q.   Was this -- you're in a car, is
12   this on speaker phone?
13      A.   Yeah, we're on speaker.
14      Q.   Okay.  Go ahead, I'm sorry.  I
15   interrupted you.
16      A.   So, Joe's like I've got the
17   buyer with me.  We're ready.  He's ready to
18   meet you.  Come on, what are we doing?  And
19   then the call was like dead stopped.  It
20   was no deal.  No deal on the table, which
21   didn't make much sense to me.
22          So, Joe went through about
23   five, six different emotions.  And I've
24   gotten to know him pretty good at this
25   point, but not well enough to expect what
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 1          Christopher Messina
 2   it was.  He went from shocked, scared,
 3   aggravated, you know, almost crying, like
 4   begging to get in there and do this.
 5          But what ended up happening,
 6   which didn't make a lot of sense to me was
 7   they basically said it's too late, it's a
 8   done deal.  We've already divided it out
 9   amongst some other -- you know, the
10   other -- what do you call them?
11      ARBITRATOR:  Contractors?
12      Q.   Independent contractors?
13      A.   Yeah, but I think they used a
14   different phrase.
15      ARBITRATOR:  Service providers?
16      Q.   Service providers.
17      A.   Yeah.  Something along those
18   lines, we've already done it.  We've
19   already made the changes.  Why would I go
20   back and reverse it?  We got done what we
21   wanted to get done.  Just take it to
22   arbitration, take it to arbitration.
23      Q.   Let me understand.  So, one of
24   the two people on the speaker phone in the
25   car said to Joe with you listening, Just
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45 (Pages 480 - 483)

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1   Christopher Messina
2 take it to arbitration?
3   A.   Yeah.
4   Q.   Do you remember if it was Mike
5 or the other guy?
6   A.   I think it was Mike. Whoever
7 we spoke to later in the call. It was just
8 you're better off taking it to arbitration.
9 At this point you'll get a good amount of
10 the money back, the good amount of the
11 money. You'll get probably your asking
12 price and it moves very quickly.
13   Q.   What was Joe's response?
14   A.   He said, I don't want to do
15 that. I want to have a good relationship.
16 I believed in your guys and, you know, we
17 were supposed to do this together. He was
18 just really trying to put it back on the
19 rail for me and for him because he knew
20 that we were going to build something
21 together too.
22   I just couldn't believe this
23 was over without notice, I guess. But I
24 mean, it was clear. He's like, Let me just
25 come in, I have him with me. I want you to

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1   Christopher Messina
2 meet him.
3   And they basically said don't
4 come to the property. You're really kind
5 of not welcome.
6   Q.   And how did it end? Is that
7 how it ended?
8   A.   Pretty much, yeah. It's a
9 formula, there was a formula. Just look at
10 the contract and do the formula and the
11 formula will determine what you can
12 probably get at arbitration.
13   I kept saying, Where's this
14 formula? Let's check out this formula, you
15 know. We gotta figure out what's going on.
16 I think I even said, Before you even go
17 home, go and stop by with the attorney and
18 get it in process, get it started, because
19 the quicker you get it going, the quicker
20 it will end. You'll get your money.
21   Q.   And what were you thinking?
22   A.   I was pissed.
23   Q.   You were pissed?
24   A.   I was. I was upset.
25   Q.   Why?

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1   Christopher Messina
2   A.   Because I spent a lot of time
3 prepping for it and keeping it alive for
4 the most part. I wanted to see Joe move on
5 to something else. His father's -- the
6 loss of his dad was devastating for him.
7 He was his best friend. So he really
8 struggled with that; he had a hard time.
9   He needed this problem over
10 with, this thing that was delaying. And
11 then I looked like a fool. You know, I
12 looked like an idiot because this deal that
13 I kept saying keep alive, keep alive. I've
14 got the financing, we're in good shape, and
15 then it's gone with no warning, no
16 anything.
17   Oh, they dismantled it and
18 reworked it with the existing contractors
19 within the company. It's no longer
20 available or needed. So it made me look
21 kind of foolish.
22   Q.   Did you get back in the car and
23 go back to New Jersey?
24   A.   We were still in the car. We
25 never got out of the car.

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1   Christopher Messina
2   Q.   Oh, you never got out. You
3 were in the car the whole time?
4   A.   Yes. I was like, Let's go.
5 This isn't happening. It's clearly -- you
6 know, this is a dead issue. So that was
7 it. Back through the tunnel we went.
8   Q.   Then you went back to
9 New Jersey and that was it?
10   A.   Yeah.
11   MR. ROTH: I have no further
12   questions. Thank you.
13 CROSS EXAMINATION
14 BY MR. DEL BOVE:
15   Q.   Good afternoon, sir. My name
16 is Chris Del Bove. I represent FedEx. I
17 have a few follow-up questions here.
18   Do you know what an ISPA is?
19 Have you ever heard that term, ISPA? Do
20 you know what that is?
21   A.   I've heard of an ISPA.
22   Q.   What is it?
23   A.   I mean, I've heard of it. You
24 tell me.
25   Q.   Again, part of the process is

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1   Christopher Messina
2 the attorneys get to ask the questions
3 here.
4   Did Joe give you a copy of the
5 contract between him and FedEx?
6   A.   No, I never got a -- I didn't
7 get a copy of the contract.
8   Q.   So as part of your review
9 vetting process of the business, you never
10 reviewed a copy of the contract?
11   A.   Not between those two.
12   Q.   Between Joe and FedEx?
13   A.   Right.
14   Q.   What did you review?
15   A.   The financials.
16   Q.   What financials were there?
17   A.   We reviewed the revenue stream
18 that he had, the balance sheet, and his own
19 1099 because he's an independent contract.
20 You know, he will operate on independent.
21 Sole proprietorships or LLCs.
22   Q.   So the 1099, would that be
23 something -- well, let me ask you. Which
24 years of the 1099s did you review?
25   A.   We looked at the last two. We

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1   Christopher Messina
2 looked at '22 and -- no, we looked at year
3 to date '22 and we looked at '21. But
4 again, I sent it down to my guy in Florida.
5 I identified the opportunity, but I sent it
6 to the guys.
7   Q.   You said the guy is Kevin,
8 right, in Florida, the gentleman?
9   A.   No.
10   Q.   What was the gentleman's name
11 in Florida?
12   A.   It's Sam and Rob.
13   Q.   Great. What's Sam's last name?
14   A.   Kaplowitz.
15   Q.   And Rob, same last name?
16   A.   Correct. They're brothers.
17 Sam is the chiropractor and Rob is the
18 entrepreneur.
19   Q.   You also looked at the balance
20 sheets?
21   A.   Yes.
22   Q.   When you say balance sheets,
23 tell us what that is.
24   A.   We reviewed the run rate of the
25 business, what they did monthly, how the

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1   Christopher Messina
2 business did on gross revenue.
3   Q.   Understood. But when you say
4 you looked at the balance sheets, was this
5 something that Joe prepared? Was this
6 something FedEx prepared? Something else?
7   A.   It was a printout of Joe's LLC.
8 It was something that came from Joe. It
9 was the numbers of the operation that we
10 were buying.
11   Q.   And this was something that Joe
12 prepared for you?
13   A.   Yes.
14   Q.   And was it prepared for the
15 purposes of the transaction, or is it
16 something prepared in J & J's ordinary
17 course of business, if you know?
18   A.   I don't know. It's what Rob
19 wanted to look at. He was the one that did
20 the underwriting, and I requested it and
21 sent it down.
22   Q.   When you say "underwriting,"
23 what do you mean by that?
24   A.   That's a mortgage term for me.
25   Q.   And insurance term for me.

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1   Christopher Messina
2   A.   It's to review the documents of
3 a company. Due diligence.
4   Q.   Okay. When you say
5 "underwriting," it's just doing due
6 diligence research?
7   A.   Yeah. It's looking, you know,
8 at the business.
9   Q.   Did you ever confirm the
10 transaction with Joe in writing, e-mail,
11 letter, anything like that?
12   A.   What, our transaction?
13   Q.   Yes.
14   A.   Yes. We had a document. We
15 had a -- I think we had a bill of sale or
16 something he prepared.
17   Q.   Joe had prepared?
18   A.   Joe had prepared it. We were
19 on the phone with one of his guys that was
20 going to do a notary. He wanted to get it
21 notarized so he could show you guys.
22   Q.   Did you ever see this bill of
23 sale with your own eyes? Did you ever see
24 the document before?
25   A.   Yeah. I saw it on an e-mail, I

47 (Pages 488 - 491)

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1   Christopher Messina
2 believe.
3   Q.   Okay. Do you know how many
4 pages it was? One page?
5   A.   It was a couple of pages. It's
6 a simple document, bill of sale.
7   Q.   Okay. I'll represent to you I
8 haven't seen it to date.
9   Other than the bill of sale,
10 any other documents between you guys?
11   A.   No.
12   Q.   Did you ever, in fact, sign
13 that document?
14   A.   No.
15   Q.   Okay. So you never signed it;
16 you never got it notarized?
17   A.   Actually, I think we did. He
18 wanted to get it notarized.
19   Q.   So you signed it, correct?
20   A.   I believe so, yes.
21   Q.   And Joe signed it, correct?
22   A.   I don't know. I believe so.
23   Q.   If you don't know, that's fine.
24 That's a perfectly acceptable answer.
25   Do you know one way or the

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1   Christopher Messina
2 other whether Joe signed it or not?
3   A.   I don't know. I'm sure he did
4 but...
5   Q.   I think earlier you said you
6 sort of shadowed Joe's route once or twice
7 with him?
8   A.   Just one time. We went down to
9 a couple of areas down here in New York.
10   Q.   And was that you and Joe?
11   A.   Yes.
12   Q.   Anyone else present?
13   A.   No.
14   Q.   Did you ever ride on or go on
15 the trucks at all?
16   A.   No.
17   Q.   Did you have a plan -- well,
18 let me ask you this: If the capital group
19 took over, who was going to be the AO?
20   A.   Rob was going to be -- he's the
21 Amazon guy in Florida. He has family up
22 here, so he had two or three different
23 people that he was going to come in here
24 and, you know, be there for day-to-day
25 operations.

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1   Christopher Messina
2   And he was going to work with
3 Joe during the transition, however long it
4 took. You know, he said he would stay on
5 up to six months if he had to, but from
6 what I understand, it was a pretty simple
7 turnkey operation.
8   Q.   I'll represent to you that
9 there could only be one AO of each company.
10 Do you guys identify who that would be?
11   A.   Like I said Rob, he was the
12 Amazon guy. He was going to be structuring
13 that whole time.
14   Q.   So Rob would as AO?
15   A.   Until he had somebody from
16 New Jersey.
17   Q.   Did Rob intend to move up here
18 to New York?
19   A.   No, he didn't intend to move up
20 here.
21   Q.   Do you agree with me you
22 provided an RFI in this case, correct?
23   A.   Yes.
24   Q.   You agree with me that your RFI
25 doesn't indicate your or the capital

Page 495

1   Christopher Messina
2 group's financial viability?
3   A.   What do you mean?
4   Q.   Sure. You agree with me, you
5 prepared an RFI, right?
6   A.   Yes.
7   Q.   And contained within that RFI
8 doesn't confirm or provide any proof of
9 financials, correct?
10   A.   No, it does not.
11   Q.   What was your plan to cover
12 expenses, payroll, fuel, things like that?
13   A.   Again, the day-to-day operation
14 was going to be done by Rob. He was going
15 to come in with it, and Joe was going to be
16 handling the transition. But the cash flow
17 was more than enough to support the
18 operation.
19   Q.   Besides yourself, Rob, and Sam,
20 any other partners of the capital group?
21   A.   No.
22   Q.   Did the capital group ever file
23 articles of incorporation or anything like
24 that?
25   A.   Sure.

48 (Pages 492 - 495)

Page 496

1   Christopher Messina
2   Q.   Which state was that?
3   A.   Delaware.
4   Q.   Okay. Did you file -- J & J
5 was going to be operating out of New York
6 though, right?
7   A.   Yes.
8   Q.   Did you file anything in
9 New York?
10   A.   We didn't yet. I don't know.
11 I'd have to ask Rob. Rob may have to
12 secure the name, I don't know. But that
13 would have been something he would do.
14   Q.   What steps did you take to
15 educate yourself on the pick-up and
16 delivery business thing?
17   A.   Again, I am the one who
18 identified the opportunity because of the
19 relationship with Joe. I learned what I
20 did from talking with Joe and getting an
21 understanding of it, but it wasn't going to
22 be my day-to-day operations. So I am not
23 an expert in the delivery business.
24   Q.   Okay. Prior -- I know you gave
25 a little history about your background,

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1   Christopher Messina
2 your resume, if you will.
3   Have you ever done any prior
4 deals with transportation logistics
5 companies?
6   A.   Me personally, no.
7   Q.   Do you have any prior
8 experience working face-to-face with
9 customers?
10   A.   Sure.
11   Q.   Where was that?
12   A.   I mean, I've been doing
13 mortgages, you know, my whole life, dealing
14 with people all the time.
15   Q.   Did you form an understanding
16 as to the demographics of the station and
17 the CSA location?
18   A.   Again, you're asking me
19 questions of the daily operation, and I am
20 not going to be able to help you with that.
21   Q.   Same questions, if I asked you
22 about peak and things like that, you kind
23 of don't know what that is and you're going
24 to rely on your partners?
25   A.   Yeah.

Page 498

1   Christopher Messina
2   Q.   Did the capital group, did it
3 draft any employee handbooks or anything
4 like that? Did it draft any documents in
5 preparation?
6   A.   Again, that would be Rob.
7   Q.   If I ask you same questions
8 about DOT guidelines, safety, things like
9 that, that would all be Rob, as well?
10   A.   It would be. And in my
11 experience when we get involved with
12 companies, I am going to say probably no to
13 most of those questions because we hadn't
14 been able to solidify the final phases.
15   That's part of the aggravation
16 that they had with me because time just
17 kept slipping by and the transaction wasn't
18 moving ahead. And they were wondering why
19 can't we just get this thing finished. Are
20 we doing it or not?
21   Q.   Did you form an understanding
22 as to the volume of packages that that area
23 that you were going to contract for?
24   A.   The discussions -- I was on the
25 conference calls between Joe and Rob, but I

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1   Christopher Messina
2 don't know. Again, I paid attention, but
3 not really. I was multitasking just
4 because it's not my area of expertise on
5 this.
6   Q.   Earlier you testified about an
7 individual Kevin.
8   A.   Yeah.
9   Q.   What's Kevin's last name?
10   A.   I don't know. I don't know
11 Kevin. He was just the liaison between
12 the -- he was a boyfriend of somebody.
13   Q.   Did Kevin work for Joe?
14   A.   No.
15   Q.   Did Kevin have any type of
16 family cousin relationship?
17   A.   I really don't know.
18   Q.   You indicated when talking to
19 Mr. Roth, you spent a lot of time trying to
20 keep the deal alive.
21   Do you remember saying
22 something to that effect?
23   A.   I just kept the conversation
24 with Joe and kept in touch with him,
25 finding out what was happening with the

49 (Pages 496 - 499)

Page 500

1   Christopher Messina
2 transaction.
3   Q.   All right. Do you recall
4 being -- were you aware that Joe was
5 notified that an assignment needed to be
6 completed by June 10th? Did Joe ever tell
7 you that?
8   A.   Joe said the cutoff date of
9 June 10th was the last day that we had to
10 get in there and meet with everybody.
11 That's all I remember. That's when he
12 said, I am just ready to go in there and --
13 let's go in, let's just get there so we can
14 do it. And I made myself available.
15   Q.   All right. Did he tell you
16 that the actual -- the deal contract had to
17 be done by that date? Was that your
18 understanding?
19   A.   No, I don't know. I just know
20 that June 10th was the date we got in the
21 car -- on the truck and headed in. I mean,
22 I thought they were expecting us, to be
23 honest with you.
24   (Whereupon, a short break was
25   taken at this time.)

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1   Christopher Messina
2   Q.   I just wanted to confirm your
3 testimony. Is it that Rob -- the capital
4 group had planned to be the AO, right?
5   A.   Yes.
6   Q.   Would it be fair to say Rob
7 never looked at the routes. He never
8 physically came down to New York to drive
9 along them?
10   A.   He did not physically get to
11 New York, but Joe and him spent quite a bit
12 of time talking things through -- Rob never
13 made it up to New York to physically do the
14 routes, but he -- they spent a lot of time
15 on the phone.
16   But Rob is from New York. He
17 had a couple of -- he had a nail salon up
18 here and he had a couple of Airbnbs. So he
19 knew New York very well.
20   Q.   So fair to say you never looked
21 at the ISPA and fair to say Rob never
22 looked at the ISPA either?
23   A.   I don't know if Rob did. If
24 anyone did, it would have been Rob.
25   Q.   Well, earlier I think you said

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1   Christopher Messina
2 that Joe never gave it to you guys, right?
3   A.   I said I wasn't sure.
4   Q.   Fair enough.
5   The day you and Joe drove up to
6 the station, was it just the two of you in
7 the car, no one else?
8   A.   Yes.
9   Q.   And fair to say Rob never met
10 FedEx face-to-face?
11   A.   No.
12   Q.   Rob never -- Rob wasn't driving
13 up with you there that day, correct?
14   A.   No.
15   Q.   And Rob never spoke to FedEx
16 about anything, correct?
17   A.   I don't think he ever spoke to
18 the guys at FedEx.
19   MR. DEL BOVE: No further
20   questions.
21   MR. ROTH: I want to ask you
22   one question.
23 REDIRECT EXAMINATION
24 BY MR. ROTH:
25   Q.   Before I do, I wanted to ask

Page 503

1   Christopher Messina
2 you if you could identify Tab 25. Just
3 look through it and just tell me what it is
4 because I forgot to ask you that. Just
5 skim through it and tell me what it is.
6   A.   Looks like it's an e-mail from
7 Joe referencing the RFI that was completed.
8   Q.   Is that your RFI on Tab 25?
9   A.   Yeah.
10   Q.   My one question is this: So,
11 you were asked a lot of questions by
12 counsel about your knowledge of the
13 business, who was going to operate the
14 business, all those questions you were
15 asked.
16   Were those the questions you
17 anticipated being asked when you went to
18 meet with FedEx and they didn't let you in?
19   A.   No.
20   Q.   What did you expect at that
21 meeting?
22   A.   I expected that they wanted to
23 get to know who we were, what businesses we
24 have been involved with, what we currently
25 have. You know, was there anything with

50 (Pages 500 - 503)

Page 504

Christopher Messina

2 the current operation that, you know, you'd
3 like to see some changes with.
4   I mean, we heard FedEx is a
5 great company. You know, a good company to
6 work for. Very, you know, American. And,
7 you know, it turned out not to be that way,
8 that's for sure. In this particular
9 situation.
10   Q.   Meaning you never even had the
11 opportunity to answer questions or ask
12 questions?
13   A.   Yeah. I never got to -- well,
14 it was almost like it was dismantled before
15 I had a chance -- we had a chance to close
16 on it. So we kind of just wasted our time.
17   MR. ROTH: I have no further
18   questions. Thank you.
19   MR. DEL BOVE: I have one
20   question.
21 RECROSS EXAMINATION
22 BY MR. DEL BOVE:
23   Q.   Is it your name or Rob's name
24 that is on the RFI?
25   ARBITRATOR: What exhibit is

Page 505

1   Christopher Messina
2   that?
3   MR. DEL BOVE: 25.
4   Q.   That's your name, right?
5   A.   That's my name.
6   MR. DEL BOVE: No further
7   questions.
8   (Whereupon, a short break was
9   taken at this time.)
10   XXXX
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 506

1   Shawn Ponds
2   ARBITRATOR: Can you hear me?
3   THE WITNESS: Yes, ma'am.
4   ARBITRATOR: Would you please
5   raise your right hand.
6   Do you promise to tell the
7   truth, the whole truth and nothing
8   but the truth?
9   THE WITNESS: Yes, ma'am.
10 S H A W N   P O N D S,
11   called as a witness, having been
12   first duly sworn by a Notary Public
13   of the State of New York, was
14   examined and testified as follows:
15   ARBITRATOR: We'll start with
16   Respondents' direct.
17   Are you alone in that room?
18   THE WITNESS: Yes, sir. My son
19   is about to leave right now.
20   ARBITRATOR: Okay. Good. Yes,
21   you should be alone.
22   All right. Mr. Ayes, you are
23   going to run the direct?
24   MR. AYES: Yes.
25   ARBITRATOR: Okay.

Page 507

1   Shawn Ponds
2   MR. AYES: Thank you.
3 DIRECT EXAMINATION
4 BY MR. AYES:
5   Q.   Thanks, Shawn. Can you please
6 start -- and you can put your hand down.
7   Can you please start by telling
8 us your current employment?
9   ARBITRATOR: By telling us your
10   name and spelling it.
11   THE WITNESS: My name is Shawn
12   Ponds, S-H-A-W-N, P-O-N-D-S. I am
13   currently a FedEx Ground contractor
14   ISP.
15   Q.   What company do you work for?
16   A.   Fire and Ice Trucking.
17   Q.   Is that your company?
18   A.   Yes.
19   Q.   Are you the AO for that
20 company?
21   A.   Yes.
22   ARBITRATOR: I missed the name
23   of the company.
24   MR. AYES: Fire and Ice.
25   Q.   And what area do you work

51 (Pages 504 - 507)

Page 508

1   Shawn Ponds
2   for -- do you service for FedEx Ground?
3   A.   27 -- 10027 ZIP.
4   Q.   And that's a ZIP code and
5   that's within Manhattan; is that right?
6   A.   Yes, yes. New York, New York.
7   Q.   Are you familiar with
8   Mr. Ruggiero and JEE?
9   A.   Yes.
10   Q.   How do you know Mr. Ruggiero?
11   A.   We was -- we sat down a couple
12 of times. We do the same area so I see
13 some of his guys, and we came to -- we had
14 to do an overlap. So first we tried to sit
15 down and see what we was going to do with
16 that.
17   The company was going into,
18 like -- everybody had to overlap and they
19 put it out there to get in contact with the
20 person that's in your area.
21   Q.   And you're aware that we are in
22 arbitration today. We're at a hearing
23 about a dispute that Mr. Ruggiero has with
24 FedEx Ground?
25   A.   Yes, yes.

Page 509

1   Shawn Ponds
2   Q.   In connection with this matter,
3   were you asked to provide an affidavit?
4   A.   Yes.
5   Q.   Okay. Do you recall providing
6   one?
7   A.   Yes.
8   Q.   The affidavit that you
9   provided, was it a sworn statement?
10   A.   Yes.
11   Q.   And it was notarized, as well?
12   A.   Yes.
13   Q.   And it was provided to me,
14 correct?
15   A.   Yes, sir.
16   MR. AYES: I'm going to show
17   you that affidavit, Chris.
18   Q.   Can you see on the screen, it
19 says Affidavit of Shawn Ponds?
20   A.   Yes.
21   Q.   You can read it to yourself,
22 sir.
23   A.   All right. Yes.
24   Q.   Do you recognize this document?
25   A.   Yes.

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1   Shawn Ponds
2   MR. AYES: Just for the record,
3   this was produced as FXG-002122.
4   Q.   Do you recognize what's
5   contained in this document? And scroll on
6   the second page, too.
7   A.   Say again?
8   Q.   Do you recognize what's
9   contained in this affidavit?
10   A.   Yes.
11   Q.   Is that your signature on --
12   A.   Yes.
13   Q.   -- the second page?
14   A.   Yes.
15   Q.   And did you have this
16 notarized?
17   A.   Yes. Yes, sir.
18   Q.   Now, you've had an opportunity
19 to review this affidavit here in front of
20 you?
21   A.   Yes.
22   Q.   The statements that are
23 contained in this affidavit, are those
24 still true and accurate statements?
25   A.   Yes.

Page 511

1   Shawn Ponds
2   Q.   Did you ever have an agreement
3   with Mr. Ruggiero to purchase 10027?
4   A.   No.
5   Q.   Can you explain what your
6   interactions were with Mr. Ruggiero
7   regarding this area?
8   A.   We -- first time I spoke to
9   him, we went down and we sat down and
10 talked. We talked about how his business
11 works, who did he have and things of that
12 nature. Like, oh, I have this person, this
13 person, they're good.
14   The next time we're supposed to
15 meet was, I was supposed to go to Yonkers
16 on a Saturday where -- which I did. I went
17 to Yonkers on a Saturday, Saturday morning
18 and he never showed up.
19   Q.   And what happened after that?
20   A.   After that he sent me a text
21 saying that he got pulled over by the
22 police and some other things. But yeah, he
23 said he got pulled over by the police or
24 something like that.
25   But the problem that I had with

52 (Pages 508 - 511)

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Page 512

Shawn Ponds

1
2 that was, I'm talking to the guy right next
3 to me. I'm standing here. You're talking
4 to your worker right next to me, why not
5 talk to me? You can call him, but you
6 can't me? And you made me come here.
7   Q.   Did you ever have a
8 conversation with Mr. Ruggiero in or around
9 May or June of 2022 on the phone?
10   A.   Yes, I had several
11 conversations with him on the phone.
12   Q.   Do you know if any of those
13 conversations were ever recorded by
14 Mr. Ruggiero?
15   A.   Not to my knowledge. I was
16 never made aware of it. Not to my
17 knowledge.
18   Q.   Did he ever tell you he was
19 recording any phone calls with you?
20   A.   Never. Never.
21   Q.   When was the last time you
22 spoke with Mr. Ruggiero about the potential
23 opportunity to purchase his area?
24   A.   The last time was the time when
25 I went up there, he never showed up.

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Shawn Ponds

1
2   Q.   Do you recall approximately
3 when that was?
4   A.   I don't know what day that was.
5 I don't know, but that was the last time
6 after that. If you make me come somewhere
7 and you don't show up when we're supposed
8 to do business, that means you don't want
9 to do business with me.
10   Q.   In the affidavit, if you look
11 at paragraph 4.
12   A.   Uh-huh.
13   Q.   It states: Mr. Ruggiero
14 provided me with documentation, however, it
15 was not for the service area he was
16 currently selling.
17   Did I read that right?
18   A.   Yeah.
19   MR. ROTH: Hold on. I have an
20   objection.
21   ARBITRATOR: Hold on,
22   Mr. Ponds.
23   MR. ROTH: I have an objection.
24   When you have a witness on the stand,
25   you don't put an affidavit in

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Shawn Ponds

1
2 evidence to support the testimony.
3 You ask him questions; you get
4 answers.
5   I mean, the affidavit -- you
6 don't -- it's improper to say here's
7 your affidavit, is this what it says?
8 I think the affidavit is no longer
9 important, and you get his testimony
10 under oath. That's the way it's
11 done.
12   MR. AYES: I would respond this
13 is an issue we brought the other day,
14 and I think it was explained that if
15 we wanted to get the affidavit for
16 the arbitrator's consideration, we
17 would need to bring in Mr. Pond
18 subject to cross-examination so his
19 affidavit could be formally admitted.
20   That's what we are doing. I
21 would ask the arbitrator to give it
22 the weight she desires in deciding
23 this case.
24   MR. ROTH: My answer is you
25 don't put somebody on the stand

Page 515

Shawn Ponds

1
2 unless there's an inconsistency
3 corroborated in the affidavit.
4   ARBITRATOR: I am going to let
5 it go because he's basically using
6 the affidavit to fashion his
7 questions. And we'll have the
8 affidavit and we'll have the
9 questions in the transcript, and they
10 will mirror each other basically.
11   In fact, at this point you
12 could have the affidavit in your hand
13 and not on the screen and ask
14 Mr. Ponds the questions.
15   MR. AYES: Mr. Ponds needs it
16 for purposes of --
17   ARBITRATOR: Oh, he needs it.
18 Okay.
19   Q.   All right. Mr. Ponds, going
20 back to paragraph 4, can you explain what
21 the documentation was that Mr. Ruggiero
22 provided you?
23   A.   He sent me a 1099. A 1099 of
24 the contract that he has. And the 1099 --
25 and this is what I spoke to him about --

53 (Pages 512 - 515)

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```
 1          Shawn Ponds
 2  the 1099 showed everything that he had, but
 3  he didn't have everything that -- you know,
 4  he showed me 35 ZIP and 27 ZIP.
 5          I wasn't interested in
 6  purchasing 35 ZIP.  All I wanted was 27.
 7  So that was -- this is what I explained to
 8  him.  I said you have to show me 27 ZIP
 9  only.  You can't show me both and think
10  that's how it works.  You gotta show me 27
11  only.
12     Q.   After you explained this to
13  Mr. Ruggiero, were you ever provided with
14  any further documentation concerning the 27
15  ZIP?
16     A.   No.  He did not send me -- no,
17  he didn't send me things that says 27.  He
18  did not, because what he would have had to
19  do would have had to go by settlement.
20  Like this is what -- after the 35 was gone,
21  he had to show me what 27 really made.
22     Q.   And before June 10th which was
23  the date that Mr. Ruggiero's agreement
24  expired, did you ever deliver any HD J & J
25  packages?
```

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```
 1          Shawn Ponds
 2     A.   No.
 3     Q.   When was the first time you
 4  started to deliver HD packages in your
 5  area?
 6     A.   It had to be after -- it should
 7  have been probably -- it was in June some
 8  time, but it was towards like the middle of
 9  June or something like that.  But it wasn't
10  when we was trying to do business, because
11  I remember my terminal was in Maspeth.  His
12  terminal is all the way in Yonkers.
13          My terminal is 300 Maspeth,
14  that's all the way in Brooklyn.  His was
15  all the way in Yonkers.
16     Q.   Prior to getting those HD
17  packages in your service area, did anyone
18  from FedEx Ground tell you that J & J's
19  agreement was ending?
20     A.   No, I didn't know it was
21  ending.  I didn't know.  Nobody told me it
22  was going down.
23     Q.   Did Mike Scherer ever tell you
24  that J & J's agreement was ending before
25  you got HD packages?
```

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```
 1          Shawn Ponds
 2     A.   He said -- I think he said it
 3  was a possibility that he was selling.  He
 4  didn't say he was -- it was ending.  He
 5  didn't tell me that it was ending.
 6     Q.   Do you know when he told you
 7  that?
 8     A.   It was way before.  It was way
 9  before -- I can't remember, but I know that
10  he told me that you need to look into -- he
11  didn't tell me it was ending.  We had to do
12  the overlap.  So look into the person in
13  your area, they might be selling.  That was
14  the conversation.
15     Q.   Do you know what overlap was?
16     A.   We had a meeting.  What they
17  provided is that ground and home will be
18  together.  So I would have had to sit down
19  with Joey and try to split out our route.
20  He would take some of the home and I would
21  take some of the ground.
22          At the time, I had ground, and
23  I would have had to take some of his home
24  delivery.  He would have had to take some
25  of my ground packages.
```

Page 519

```
 1          Shawn Ponds
 2     Q.   How did you first learn that
 3  you were acquiring the area to service HD
 4  as well as ground?
 5     A.   It was a -- I think it was
 6  like -- they said, Can you handle some
 7  additional packages?
 8     Q.   I think your video went off,
 9  Mr. Ponds.
10     A.   Hold on one second.
11          So they said that, Can I handle
12  some additional packages?  I said, Sure,
13  you know.  I will try to handle it, but
14  then they gave me a whole bunch.
15     Q.   First time they gave you
16  packages, were you the only contractor that
17  was servicing that 10027 area?
18     A.   Yes, sir.
19          MR. AYES:  I don't have any
20     further questions.  Thank you.
21     Mr. Roth may have some questions for
22     you, Mr. Ponds.
23  CROSS EXAMINATION
24  BY MR. ROTH:
25     Q.   Hi, Mr. Ponds.  Can you hear
```

54 (Pages 516 - 519)

Page 520

```
 1            Shawn Ponds
 2  me?
 3     A.   Yes, sir.
 4     Q.   Let's focus on Number 4 in your
 5  affidavit.
 6          It says:  Mr. Ruggiero provided
 7  me with documentation, however, it was not
 8  for the service area he was currently
 9  selling?
10          That's not accurate, is it?
11     A.   Yes, that's accurate.
12     Q.   So, he gave you the 1099 for
13  10027 and 10035; is that correct?
14     A.   Yes.  He gave me a 1099 -- he
15  gave -- this is what we spoke about.  He
16  gave me a 1099 for everything.  He didn't
17  break it up.
18     Q.   And what was everything that he
19  had at the time?
20     A.   35 and 27.
21     Q.   Did he have 35 in 2022?
22     A.   35 and 27.
23     Q.   My question is:  Do you know if
24  Mr. Ruggiero or J & J actually had 10035 in
25  2022?
```

Page 521

```
 1            Shawn Ponds
 2     A.   He showed me 2021.
 3     Q.   Do you know if he had --
 4          ARBITRATOR:  Let him answer the
 5     question.
 6          MR. ROTH:  I thought he did.
 7          ARBITRATOR:  No.
 8     A.   2021 1099.
 9     Q.   You done?
10     A.   Yes, sir.
11     Q.   Okay.  So do you know what
12  routes Mr. Ruggiero had in 2021?
13     A.   Yes.  He had -- I know he had
14  35 and 27.
15     Q.   Do you know if he sold 35 in
16  2021?
17     A.   To my knowledge, he did.
18     Q.   I didn't hear, I'm sorry.
19  What?
20     A.   To my knowledge, he did.
21     Q.   He did sell 35.
22          So do you know when in 2021 he
23  sold 35?
24     A.   I don't have the slightest idea
25  when.
```

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```
 1            Shawn Ponds
 2     Q.   It's not that he gave you the
 3  information for the wrong service area,
 4  which is what four says.  You're saying he
 5  gave you the information for that service
 6  area and potentially more than that service
 7  area, correct?
 8     A.   Yes.  He gave me everything in
 9  2001.
10     Q.   Did you say to him, Well, I
11  want something which is more just on 27?
12     A.   Yes, that's what I told him.
13     Q.   In fact, didn't you meet
14  Mr. Ruggiero at a barbecue -- at a
15  restaurant that had a barbecue restaurant?
16     A.   Yeah, a BBQ restaurant.
17     Q.   BBQ, okay.  When was that?
18     A.   I can't recall the day, though.
19     Q.   Was it in April or May of 2022?
20     A.   It could have been.  I don't
21  know the exact date.
22     Q.   Let's do it this way.  You know
23  that on June 10th you took over the routes.
24  June 11th, correct?
25     A.   I don't know what day that is.
```

Page 523

```
 1            Shawn Ponds
 2          MR. AYES:  Objection.
 3     Mischaracterization.
 4     Q.   Let me represent to you
 5  Mr. Ruggiero's contract terminated on June
 6  10th.  How far before June 10th do you
 7  believe it was that you met with
 8  Mr. Ruggiero at the BBQ?
 9     A.   The BBQ was before the time he
10  didn't meet me.  It was before that time.
11     Q.   And you also met on the route,
12  didn't you?
13     A.   No.  He never came to the
14  route.
15     Q.   But at the BBQ you discussed
16  the purchase of the business, correct?
17     A.   Yes.
18     Q.   And Mr. Ruggiero gave you
19  information about the business in that
20  meeting, didn't he?
21     A.   Yes, he did.
22     Q.   And you don't know when it was,
23  but you know it was before he was gone from
24  the business, correct?
25     A.   Uh-huh.
```

55 (Pages 520 - 523)

Page 524

1   Shawn Ponds
2   Q.   And you spoke -- was that a
3 yes?
4   A.   Yes.
5   Q.   You spoke to Mike Scherer about
6 the sale of Mr. Ruggiero's business to you
7 before he was terminated, correct?
8   A.   I spoke to Mike Scherer way
9 before he was terminated to do the overlap.
10 That's when we had a meeting with
11 everybody. Not just me, everybody. And
12 this was said in the meeting. You guys
13 need to get with the guy that's in your
14 area because overlap is coming.
15   Q.   So FedEx was promoting overlap;
16 is that right?
17   A.   Yes.
18   Q.   And when approximately was that
19 meeting, bearing in mind that the last day
20 of J & J was June 10th?
21   A.   That was before then. Way
22 before then.
23   Q.   Was it 2022? 2021?
24   A.   Probably early 2022, but it was
25 way before. That's how we knew we had to

Page 525

1   Shawn Ponds
2 get in contact with people because they're
3 doing overlap.
4   Q.   And FedEx wanted there to be
5 overlap among the ZIP codes, right?
6   A.   Yes.
7   Q.   So FedEx would prefer if
8 Mr. Ruggiero were selling his business, for
9 you to buy or you to take it, either one,
10 because you could do both ground and home,
11 correct?
12   A.   They would prefer, but we have
13 to come up with an agreement. They can't
14 tell us what to do. We have to come up
15 with an agreement.
16   Q.   So didn't Mike Scherer call you
17 up and say how's the sale going?
18   A.   Yes. He called me and asked me
19 what's going on.
20   Q.   What did you say to him?
21   A.   I said right now, it's nothing.
22 We still -- one thing I told him, I said,
23 we still talking. And one of the things
24 that I didn't like, I told Mike Scherer is
25 that he's sending me stuff that's not

Page 526

1   Shawn Ponds
2 accurate.
3   Q.   Joe's sending stuff that's not
4 accurate?
5   A.   Yeah, Joe.
6   Q.   Got it. And I know you said
7 you didn't know that you were being
8 recorded, but did you come to learn that
9 there was a recorded conversation between
10 you and Joe?
11   A.   No.
12   Q.   Yeah?
13   A.   No.
14   Q.   You did not, okay.
15   Are you aware that in every
16 recorded conversation you said, quote, We
17 had a deal, but you didn't show up,
18 something like that?
19   MR. AYES: Objection.
20   A.   What did you just say?
21   Q.   I'm saying, are you aware
22 during that conversation you said, We had a
23 deal, but you didn't show up?
24   ARBITRATOR: He wasn't aware of
25   the recording.

Page 527

1   Shawn Ponds
2   Q.   No, no, no. Are you aware that
3 in a conversation you said to Joe that we
4 had a deal, but you didn't show up? Are
5 you aware you said that in a conversation?
6   A.   That could have been around the
7 time when he didn't show up. So that could
8 have been the time where he didn't show up
9 in Yonkers. It could have been around
10 there.
11   Q.   My focus --
12   A.   He didn't show up.
13   Q.   My focus is not on the second
14 part of that sentence, but the first. We
15 had a deal, but you didn't show up.
16   Are you aware you said to Joe
17 in a recorded conversation, which
18 apparently you didn't know of at the time,
19 that you had a deal?
20   A.   If you don't show up, how do
21 you have a deal, sir?
22   Q.   My question is: Do you
23 remember saying we had a deal?
24   A.   I am asking you a question.
25   Q.   You have to answer mine.

56 (Pages 524 - 527)

Page 528

1   Shawn Ponds
2   A.   Hello?
3   Q.   You have to answer mine. My
4 question is very simple: Is it, in fact,
5 true you said to Joe, We had a deal, but
6 you didn't show up. Meaning that you had a
7 deal in place, but he didn't show up?
8   A.   I could have said that. If you
9 don't show up, we don't have a deal. I
10 can't have a deal, if you don't show up.
11   Q.   Well, you can have a deal and
12 have a subsequent meeting or a subsequent
13 telephone call, right?
14   A.   If you don't show up, that
15 means you don't want the deal. It's your
16 business.
17   Q.   So if you could have said we
18 had a deal, what was the deal before he
19 didn't show up?
20   A.   What was what deal?
21   Q.   Sure. You said we had a deal.
22 What was the deal?
23   A.   If you don't show up -- you
24 have to bring more paperwork. He didn't
25 bring that. As a matter of fact, he didn't

Page 529

1   Shawn Ponds
2 come, period.
3   So what do you want me to say
4 or what do you want me to do? If you don't
5 show up, okay. I'm just going to say, No
6 problem, sir. You didn't show up, we still
7 have a deal. That's not going to happen.
8 That's not how business works.
9   Q.   What does the word "deal" mean
10 to you? A transaction?
11   A.   It means that someone agrees
12 upon something.
13   ARBITRATOR: Mr. Roth, you can
14   move on. I think he answered your
15   question.
16   MR. ROTH: I am. I am well on.
17   Q.   In fact, in that same
18 conversation you told Joe, did you not,
19 that you learned he was being terminated --
20 his contract, he was being terminated from
21 somebody other than Joe?
22   A.   No, I never told him that.
23   Q.   You didn't say that?
24   A.   I never told him that.
25   Q.   Okay.

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1   Shawn Ponds
2   A.   Not to my knowledge.
3   Q.   I'm not sure you're going to be
4 able to hear this or not, but we're going
5 to take a shot.
6   A.   Okay.
7   MR. AYES: Can we identify?
8   MR. ROTH: It's 11:28 on the
9   tape.
10   (Whereupon, an audio recording
11   was played at this time.)
12   (Whereupon, the audio recording
13   was stopped at this time.)
14   Q.   Did you hear that? I didn't
15 know you had 30 days. You didn't tell that
16 to me. Did you hear that?
17   A.   Uh-huh.
18   Q.   You did or you didn't hear it?
19   A.   Yes, I heard that.
20   Q.   So when you said, I didn't know
21 you had 30 days, you didn't tell that to
22 me. You meant, did you not, that you
23 learned that he had 30 days from somebody
24 other than Joe, correct?
25   A.   No, that's not what I meant.

Page 531

1   Shawn Ponds
2 Okay. That's the whole conversation?
3   Q.   That's not the whole
4 conversation. I am taking that one
5 sentence where you said, I didn't know you
6 had 30 days. You didn't tell me that.
7   A.   Okay. You have to go for the
8 whole conversation because the whole
9 conversation when it started was that I
10 only have a little bit of time. And when I
11 respond to and say that, I didn't know you
12 had that much time. That was the whole
13 conversation.
14   Q.   But you said, You didn't tell
15 me that. Isn't that, in fact, true that
16 someone else --
17   A.   No, no, no, no. That's not the
18 whole conversation. You didn't tell me
19 that. He told me that that day. He didn't
20 tell me that before.
21   Q.   Right.
22   A.   That's the whole conversation.
23   Q.   Let get my question.
24   What did you mean when you
25 said, You didn't tell me that? Does that

57 (Pages 528 - 531)

Page 532

```
 1             Shawn Ponds
 2 mean someone else told you?
 3     A.   No.
 4     Q.   Let me move on.
 5     A.   You don't have the whole
 6 conversation taped.
 7     Q.   I got your answer, I am moving
 8 on.
 9     A.   No problem.
10     Q.   Now, when did you say -- you
11 learned you took over the routes?
12     A.   It was a Saturday.
13     Q.   Saturday in June?
14     A.   Yes, it was a Saturday in June.
15     Q.   So let me just go to my
16 calendar and we'll see if we can figure
17 this out.  I am looking at June of 2022.
18 I'll represent to you June of 2022, June
19 10th is a Friday.
20         Did you take over the routes on
21 the 11th?
22     A.   Yes.
23     Q.   So the very next day?
24     A.   Uh-huh.
25     Q.   When did you sign an ISPA for
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```
 1             Shawn Ponds
 2 these routes?
 3     A.   I didn't sign it.
 4     Q.   So was there something that
 5 contractually gives you these routes?
 6     A.   No.  It was work that needed to
 7 be done, and they asked me can I service
 8 them.  I didn't sign a contract for them at
 9 that time.  It was work that needed to be
10 done.  It was work that needed to be done.
11     Q.   Okay.  And so how did you learn
12 all of a sudden -- well, how many packages
13 do you currently deliver in 10027 ZIP code?
14     A.   How many do I deliver now or I
15 delivered then?
16     Q.   How many now?
17     A.   Say, like 9 to 1100.
18     Q.   Nine to 1100 a day?
19     A.   Yes, packages.
20     Q.   And was it the case that all of
21 a sudden on that Saturday -- withdrawn.
22         How many did you deliver back
23 then?
24     A.   Seven to 800.
25     Q.   And how many do you deliver,
```

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```
 1             Shawn Ponds
 2 other than your 10027?
 3     A.   Huh?
 4     Q.   How many packages -- I'm sorry.
 5 You also do home delivery, correct?
 6         I'm sorry, not home.  You have
 7 ground delivery, correct?
 8     A.   I have ground delivery, yes.
 9     Q.   And that's 10027?
10     A.   Yes.
11     Q.   And other than what you've
12 picked up from the J & J business, how many
13 packages did you deliver a day?
14         MR. AYES:  Objection to
15     relevance.
16     A.   Eight to 900.
17         MR. AYES:  We're focused on
18     10027.  I don't see how it's relevant
19     for other ZIP codes or any other
20     service areas in this matter.
21         ARBITRATOR:  I don't think he
22     was asking about any other ZIP code.
23     I think he was asking about 10027
24     before and after.
25     Q.   I was asking -- I actually was
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```
 1             Shawn Ponds
 2 asking about all of -- and I'll explain
 3 why.
 4         My question was:  How big was
 5 your business daily before you picked up
 6 not 7 to 900 packages on the 11th?
 7     A.   My business, I had two ZIP
 8 codes.  126, 127, and 131.
 9     Q.   How big was that business
10 before you picked up the 700, the 900 on
11 the 11th?
12     A.   No, no, no, no.  That's what I
13 was doing.  You just asked me what was I
14 doing.  I was doing 7 to 900 packages.
15 That's what I was doing.
16     Q.   I thought you said you picked
17 up 7 to 900 from 10027, correct?
18     A.   No, no, I didn't say that.  We
19 picked up probably, like, four to five in
20 the beginning.  We didn't pick up seven and
21 eight, because you gotta remember.  I had
22 127, 126, 131.
23     Q.   Okay.  So my question is:
24 You're saying overnight you were able to go
25 from 7 to 900 packages to 1300 to 1500
```

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Page 536

1   Shawn Ponds
2 packages?
3   A.   With the helper. And the way
4 we went on our route is our trucks are not
5 that full. We have P 1200s. We don't have
6 small trucks like home delivery have.
7 P 1200s are the bigger trucks, so we can
8 actually fit more packages in our trucks.
9   Q.   What happened to the drivers,
10 the drivers that were for J & J on the
11 10th? Did they become your driver's on the
12 11th?
13   A.   I took a couple of helpers.
14 The drivers got spreaded out [sic]. They
15 went to different routes and different
16 things of that nature.
17   Q.   To your knowledge --
18   A.   I got a couple of his helpers.
19 I have one of his drivers that was
20 originally driving for me, he came back to
21 me.
22   Q.   So to your knowledge, the J & J
23 drivers and helpers landed at different
24 independent contractors. They didn't all
25 go to you, but they landed somewhere?

Page 537

1   Shawn Ponds
2   A.   They landed somewhere, yes.
3   Q.   So is it fair to say that --
4 let me ask you this: We heard your tape
5 recording.
6   When did you come to learn --
7 by the way, are you alone in the room?
8   A.   Yes, I am by myself.
9   Q.   You did come to learn before
10 Joe's termination that he was going to be
11 terminated, correct?
12   A.   I didn't.
13   Q.   You did not?
14   A.   I did what?
15   Q.   You did come to learn before
16 the termination of J & J, that it was going
17 to be terminated, correct?
18   A.   Probably a day -- a day of, a
19 day before.
20   Q.   Okay. And by who?
21   A.   When I spoke to Joey on that
22 call right there, what day was that call?
23   Q.   Was that how you learned that
24 Joe or J & J was going to be terminated?
25   A.   Yes. What day was that call?

Page 538

1   Shawn Ponds
2   Q.   Okay. You answered my
3 question.
4   If I could take a five-minute
5 break.
6   ARBITRATOR: Sure. Mr. Ponds,
7   we're going to take a five-minute
8   break, but we want you to stay on the
9   phone for some additional questions.
10   THE WITNESS: No problem.
11   ARBITRATOR: Okay. Thank you.
12   (Whereupon, a short break was
13   taken at this time.)
14   Q.   Mr. Ponds, can you hear me?
15   A.   Yes, sir.
16   Q.   How many years have you been
17 at -- an independent contractor for FedEx?
18   A.   17, 18 years.
19   Q.   So you know the different
20 reporting -- the different reporting for
21 FedEx settlement reports and different
22 reports, correct?
23   A.   Yes.
24   Q.   When you met with Mr. Ruggiero
25 at BBQ, didn't he bring with him settlement

Page 539

1   Shawn Ponds
2 reports?
3   A.   No.
4   Q.   You don't remember going
5 through with him settlement reports?
6   A.   When I met with him, four
7 weeks.
8   Q.   What about four weeks? I don't
9 understand that?
10   A.   He brought four weeks' worth of
11 paperwork, settlements.
12   Q.   Let me see if I understand.
13 So, he did bring a document with him to
14 BBQ, correct?
15   A.   Yeah. No, he had it -- he
16 texted it to me, four weeks' worth of
17 settlements.
18   Q.   Okay. So he gave you four
19 weeks' worth of settlements reports just
20 for 10027, correct?
21   A.   Yes.
22   Q.   And what were the four weeks
23 that he sent? Do you know what four weeks
24 that was?
25   A.   No, it was such a long time. I

59 (Pages 536 - 539)

Page 540

1   Shawn Ponds
2 don't know what weeks it was.
3   Q.   But he gave you a sample of one
4 month of 10027, correct?
5   A.   Yes, sir.
6   Q.   So that was -- isn't that --
7 the fact that he delivered it, be it one
8 week or four weeks, isn't that not what
9 your affidavit says; that he didn't give
10 you any of the relevant information?
11   A.   No. He didn't give me a year's
12 worth of work. That's relevant. You can't
13 give me four -- all right. This is how
14 it's going to go.
15   If you give me a year's worth
16 of work, I could see what you made. You
17 can't give me four weeks of work in the
18 summertime where it's slow. I can't do
19 that.
20   Q.   In fact, isn't that a
21 conservative four weeks if it's slow,
22 right?
23   A.   It's slow. I mean, everything
24 is slow. I can't take on something if I
25 don't know actually what's going on.

Page 541

1   Shawn Ponds
2 Remember, I have my own and you have guys
3 that he want me to take over. If I am not
4 making it, I can't do it.
5   Q.   I got it. But my question is
6 very simple. Isn't it, in fact, true that
7 the statement you have in your affidavit
8 that Mr. Ruggiero provided me with
9 documentation, however, it was not for the
10 service area he was currently selling,
11 that's false, isn't it?
12   A.   No. That's not false.
13   Q.   Didn't he give you four weeks
14 for this --
15   A.   He gave me a 1099. He gave me
16 two sets of documents. 1099, which didn't
17 reflect what he gave me with the four
18 months. He gave me a 1099.
19   Q.   Four months or four weeks?
20   A.   1099.
21   Q.   Didn't he give you four months?
22   A.   Huh?
23   Q.   I'll move on.
24   Do you agree, do you not, that
25 whatever he gave you at BBQ was for the

Page 542

1   Shawn Ponds
2 service area he was currently selling,
3 correct?
4   A.   Yes.
5   Q.   Now, you went to the terminal
6 and met all of his employees, correct?
7   A.   Yes.
8   Q.   And you also saw how his
9 operation ran, correct?
10   A.   Yes.
11   Q.   And you also met his BCs,
12 correct?
13   A.   Yes.
14   Q.   Okay. This was all before --
15 well, this was all in contemplation of
16 buying the business, correct?
17   A.   Yeah, it was all together.
18   Q.   Okay. Do I understand that
19 your terminal is Brooklyn?
20   A.   Yes.
21   Q.   And J & J was Yonkers?
22   A.   Yes, sir.
23   Q.   Do you know how long it takes
24 to actually -- withdrawn.
25   So is it the case that on June

Page 543

1   Shawn Ponds
2 11th, all the boxes went from -- went to
3 the Brooklyn station, not the Yonkers
4 station?
5   A.   I can't answer that question.
6 I don't know what was in Yonkers and what
7 not was in Yonkers. But I can say 127 is
8 my area that I do. There was other people
9 in there working, so I don't know.
10   Q.   But you agree with me, do you
11 not, if a contingency plan was set up for
12 10027 for home delivery, that would have
13 been necessarily through the Yonkers
14 terminal, correct?
15   A.   Yes.
16   Q.   And yet somehow they all ended
17 up going to Brooklyn the next day?
18   A.   I can't say all of it went to
19 there, sir. I can't say. I can't.
20   Q.   But you wouldn't be the
21 contingency plan for the J & J -- you
22 couldn't be the contingency -- your video,
23 there you go -- you couldn't be a
24 contingency plan for J & J if you weren't
25 in the Yonkers branch, correct?

60 (Pages 540 - 543)

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Page 544

1   Shawn Ponds
2   A.   I don't know what their
3 contingency plans is up there. I can't
4 answer that. I don't know.
5   Q.   Did you come to conclude that
6 somehow FedEx put into effect the transfer
7 of the 10027 home delivery boxes from
8 Yonkers to Brooklyn before June 10th so
9 they -- before June 11th so they can all go
10 there on June 11th?
11   A.   I don't know their contingency
12 plan. That's something you have to ask
13 FedEx in Yonkers or Mike Scherer. I don't
14 know.
15   Q.   I guess my question is this:
16 You concluded, did you not, that because
17 all the boxes overnight went, instead of
18 Yonkers to Brooklyn, that something -- I
19 know you don't know how it was done -- but
20 you concluded that FedEx started this
21 process prior to June 11th, correct?
22   A.   They didn't come to me prior to
23 June 11th, so I don't know what they did.
24 I don't know what they did. They didn't
25 come to me prior to June 11th.

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1   Shawn Ponds
2   Q.   But they came to you on June
3 11th, correct?
4   A.   I don't know if all. I know I
5 got some work, yes, sir.
6   MR. ROTH: Okay. I have no
7   further questions. Thank you.
8   Actually, one more question.
9   THE WITNESS: Okay.
10   Q.   While you were willing to pay
11 for the business in late May, early June
12 2022, correct? For the J & J business,
13 correct?
14   A.   Yes.
15   Q.   And on June 10th you ended up
16 getting it for free, correct?
17   A.   Your client did not show up.
18   Q.   That's not my question.
19   Mr. Ponds, you can avoid it.
20 Let me try again. Mr. Ponds, you got it
21 for free, didn't you?
22   A.   We had a deal until he didn't
23 show up. He didn't show up.
24   Q.   We had a deal.
25   MR. ROTH: I have no further

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1   Shawn Ponds
2 questions.
3   THE WITNESS: He didn't show
4 up.
5   MR. ROTH: Thank you. I have
6 no further questions. We had a deal.
7   MR. AYES: No further
8 questions.
9   ARBITRATOR: I was going to try
10 and clarify that whole business with
11 production.
12   Mr. Ponds?
13   THE WITNESS: Hold on one
14 second, I can't hear you. Hold on
15 one second.
16   I can hear you now a little
17 bit.
18   ARBITRATOR: Can you hear me
19 now?
20   THE WITNESS: Yeah, I hear you.
21   ARBITRATOR: I just want to
22 clarify my understanding. Prior to
23 your discussions about the purchase
24 of 10027 home delivery --
25   THE WITNESS: Yes.

Page 547

1   Shawn Ponds
2   ARBITRATOR: -- from
3 Mr. Ruggiero.
4   THE WITNESS: Yes.
5   ARBITRATOR: You had 10027
6 ground.
7   THE WITNESS: Yes.
8   ARBITRATOR: And you made a
9 statement about your volume of
10 delivery.
11   THE WITNESS: Yes.
12   ARBITRATOR: And the number I
13 recorded was some 9 to 1100 packages
14 a day.
15   THE WITNESS: Yes.
16   ARBITRATOR: That's correct for
17 ground.
18   THE WITNESS: Uh-huh.
19   ARBITRATOR: Okay. Then
20 subsequent to that, you made some
21 statement about 7 to 800 a day. Was
22 that additional home?
23   THE WITNESS: No, it wasn't.
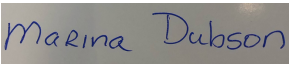24 No, it wasn't additional. We
25 received, say, 3 to 400 packages. So

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Page 548

1   Shawn Ponds
2 I'm quite sure we didn't get
3 everything.
4   ARBITRATOR: Let me just
5 reiterate what you just said to me.
6 So you did 9 to 1100 packages a day
7 ground and because of this overlap
8 initiative of FedEx, you gained 3 to
9 400 packages a day for home delivery?
10   THE WITNESS: Uh-huh.
11   ARBITRATOR: That's correct?
12   THE WITNESS: Something like
13 that, yes.
14   ARBITRATOR: And we're only
15 limiting our conversation to 10027
16 ZIP code.
17   THE WITNESS: Okay.
18   ARBITRATOR: And when was that?
19 When did you -- was that June 11th
20 that you started getting --
21   THE WITNESS: We didn't get all
22 of that. June 11th, we didn't get --
23 I will have to go back and see what
24 did we actually get. Because
25 remember, like I said, I had a bunch

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1   Shawn Ponds
2 of stuff, also.
3   So I can try to go back and
4 see, but I don't know. I can't -- we
5 cannot have taken 5 to 600 packages
6 the very next day. So that couldn't
7 work, because I have also other ZIP
8 codes. So that could -- I couldn't
9 take 5 to 600 the very next day.
10   ARBITRATOR: So it wasn't 5 to
11 600 that you said earlier. You said
12 3 to 400.
13   THE WITNESS: Yes, something
14 like that.
15   ARBITRATOR: Yes, you could?
16 Or yes, no?
17   THE WITNESS: I could take 3 to
18 4, but I couldn't take -- I could
19 take 3 to 4, yes.
20   ARBITRATOR: Home delivery?
21   THE WITNESS: Yes.
22   ARBITRATOR: The next day?
23   THE WITNESS: I could have
24 taken that, yes.
25   ARBITRATOR: In addition,

Page 550

1   Shawn Ponds
2 then -- okay, so here we are. We
3 are -- prior to June 11th, we are
4 doing 9 to 1100 ground packages a
5 day. And then June 11th and
6 thereafter, we add 3 to 400 home
7 delivery a day. Correct?
8   THE WITNESS: Yes.
9   ARBITRATOR: And then that's in
10 addition to 10026 and 10031?
11   THE WITNESS: The thing on
12 Saturday and Sunday, we don't work.
13   ARBITRATOR: What does that
14 have to do with my question that you
15 don't work on Saturday and Sunday?
16   THE WITNESS: Home delivery
17 doesn't work -- I mean, ground
18 doesn't work on Saturday and Sunday.
19 So home delivery, it just goes out on
20 Saturday and Sunday. So there's
21 nothing that we take out on Saturday
22 and Sunday.
23   ARBITRATOR: You're trying to
24 say, then, that yes, you took on home
25 delivery the next day, but you had

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1   Shawn Ponds
2 the capacity to do that because
3 ground doesn't work on Saturday and
4 Sunday?
5   THE WITNESS: Yes, ground
6 doesn't work on Saturday and Sunday.
7   ARBITRATOR: Okay. So I got
8 that. Ground doesn't work on
9 Saturday and Sunday, freeing up
10 capacity for home.
11   THE WITNESS: Yes.
12   ARBITRATOR: And not
13 interfering with 10026 and 1031,
14 which are all ground.
15   THE WITNESS: Yes, ma'am.
16   ARBITRATOR: We have a clear
17 picture. Thank you. That's all I
18 had.
19   MR. AYES: Thank you, Sean.
20   MR. ROTH: Thank you,
21 Mr. Ponds.
22   MR. AYES: Just one
23 housekeeping for the record. We
24 just -- Joint Exhibit 41 is now
25 marked as the affidavit of Shawn

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```
1           Shawn Ponds
2      Ponds, just for recordkeeping.
3           MR. ROTH:  I don't object to
4      it.
5           (Whereupon, the proceedings
6      concluded at 4:45 p.m.)
7
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1       Arbitration Proceeding
2        C E R T I F I C A T E
3
4  STATE OF NEW YORK      )
                          :
5  COUNTY OF RICHMOND     )
6
7      I, MARINA DUBSON, a Notary Public
8  within and for the State of New York, do
9  hereby certify that the within Proceeding
10 was held before me on the 25TH DAY of JULY,
11 2023.
12
13     IN WITNESS WHEREOF, I have hereunto
14 set my hand this 25th day of July 2023.
15
16
17  _____
         MARINA DUBSON
18
19
20
21
22
23
24
25
```

Marina Dubson

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